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

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **February 16, 2018**

**PROPHASE LABS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation)

**0-21617**

(Commission  
file number)

**23-2577138**

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

**621 N. Shady Retreat Road, Doylestown, PA 18901**

(Address of principal executive offices)

(Registrant's telephone number, including area code): **(215) 345-0919**

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-2)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

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

On February 16, 2018, the Board of Directors of ProPhase Labs, Inc. (the “Company”) approved Amendment No. 2 to the Company’s Amended and Restated Rights Agreement, dated as of June 18, 2014, by and between the Company and American Stock Transfer & Trust Company, LLC, as rights agent (“AST”), as amended on January 6, 2017 (the “Rights Agreement”), in order to terminate the Rights Agreement. Thereafter, on February 20, 2018, the Company and AST entered into Amendment No. 2 to the Rights Agreement (the “Rights Plan Amendment”) to accelerate the expiration of the Rights (as defined in the Rights Agreement) from 5:00 p.m., Eastern Time, on June 18, 2024 to 5:00 p.m., Eastern time, on February 20, 2018. At the time of the termination of the Rights Agreement, all of the Rights distributed to holders of the Company’s common stock pursuant to the Rights Agreement expired.

The foregoing is a summary of the terms of the Rights Plan Amendment. The summary does not purport to be complete and is qualified in its entirety by reference to the Rights Plan Amendment, a copy of which is attached as Exhibit 4.1 and incorporated herein by reference.

**Item 1.02 Termination of a Material Definitive Agreement.**

The information set forth under Item 1.01 is incorporated herein by reference.

**Item 3.03 Material Modifications to Rights of Security Holders.**

The information set forth under Item 1.01 is incorporated herein by reference.

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

On February 16, 2018, the Board of Directors of the Company approved the Amended and Restated 2015 Executive Employment Agreement with Ted Karkus, the Company’s Chief Executive Officer (the “Amended Employment Agreement”), which will become effective February 23, 2018.

Pursuant to the terms of the Amended Employment Agreement, Mr. Karkus has voluntarily agreed to reduce his base salary from the rate set forth in his previous employment agreement (the “Prior Employment Agreement”) (i.e., not less than \$675,000 per annum) to a base salary of \$125,000 per annum (the “Term Base Salary”) through February 22, 2021. Unless otherwise determined by the mutual agreement of the Company and Mr. Karkus, on February 22, 2021 and thereafter, Mr. Karkus’ salary will increase from the Term Base Salary to not less than \$675,000 per annum.

In consideration of Mr. Karkus’ voluntary reduction in salary, the Board of Directors has agreed to grant Mr. Karkus a stock option to purchase 2,300,000 shares of the Company’s common stock at an exercise price of \$3.00 per share (the “Stock Option”). The Stock Option will be granted to Mr. Karkus on February 23, 2018, and will vest and be exercisable in 35 equal monthly installments of 63,888 shares and one monthly installment of 63,290 shares, subject to his continued employment with the Company, and subject to accelerated vesting in the event Mr. Karkus’s employment is terminated for any reason other than by the Company for Cause or by Mr. Karkus without Good Reason (as such terms are defined in the Amended Employment Agreement). The Stock Option will be exercisable for a five year term commencing on the date of grant.

The Amended Employment Agreement also revised the definition of “Change in Control” to provide that a “Change in Control” will not be deemed to have occurred unless any one person or persons acting as a group (other than Mr. Karkus) acquires ownership of the stock of the Company that, together with the stock held by such person, constitutes more than 50% of the total voting power of the stock of the Company (as opposed to 30% in the Prior Employment Agreement). A Change in Control will also be deemed to have occurred upon a change in the ownership of a substantial portion of the Company’s assets, meaning assets having a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such change in ownership (subject to certain exceptions described in the Amended Employment Agreement).

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The Amended Employment Agreement also modified the benefits to be received by Mr. Karkus in the event of certain terminations of his employment. Under the terms of the Amended Employment Agreement, in the event Mr. Karkus' employment is terminated on or before February 22, 2021 for any reason other than as a result of (i) a termination for Cause (as defined in the Amended Employment Agreement), or (ii) a voluntary resignation by Mr. Karkus without a Good Reason (as defined in the Amended Employment Agreement) ((i) and (ii) collectively, an "Ineligible Termination"), then Mr. Karkus will be entitled to receive a combination of accelerated vesting of the Stock Option and a portion of a total cash severance payment of up to \$1,687,500 (as described in the Amended Employment Agreement). If Mr. Karkus' employment is terminated on or after February 23, 2021, other than for an Ineligible Termination, Mr. Karkus will be entitled to a cash severance payment equal to 2.5 times his base salary and all of his stock options and/or restricted stock will automatically vest concurrently with such termination of employment, regardless of any existing vesting schedules. If Mr. Karkus' employment is terminated for any reason, other than an Ineligible Termination, death or disability, within 18 months following a Change in Control, or prior to a Change in Control but in contemplation of a Change in Control, which Change in Control actually occurs, then Mr. Karkus will receive a one-time severance payment in cash equal to \$2,500,000 and all of his stock options and/or restricted stock will automatically vest concurrently upon such termination of employment.

The terms of the Amended Employment Agreement provide that the Amended Employment Agreement will be null and void if it is not approved by a majority of the shares voted to approve the Amended Employment Agreement (excluding the shares voted by Mr. Karkus) at a meeting of the stockholders of the Company to be held no later than September 30, 2018 (the "Stockholder Approval"). In the event the Stockholder Approval is not attained, the Prior Employment Agreement with Mr. Karkus will be reinstated in its entirety, and the initial base salary under the Prior Employment Agreement will be reinstated, retroactive to the effective date of the Amended Employment Agreement. In addition, if the Stockholder Approval is not attained, the Stock Option will terminate and be cancelled. The Stock Option may not be exercised unless and until the Stockholder Approval is attained.

The Stock Option will be granted pursuant to the 2018 Stock Incentive Plan (the "2018 Plan"), which was also adopted and approved by the Board of Directors of the Company on February 16, 2018. The 2018 Plan, like the Amended Employment Agreement, is subject to the Stockholder Approval. The 2018 Plan authorizes the issuance of up to 2,300,000 shares pursuant to stock options granted under the 2018 Plan.

The foregoing is a summary of the terms of the Amended Employment Agreement, the Stock Option and the 2018 Plan. The summary does not purport to be complete and is qualified in its entirety by reference to the Amended Employment Agreement and Stock Option, copies of which are attached as Exhibits 10.1 and 10.2, and incorporated herein by reference, and by the 2018 Plan, which will be filed as an exhibit to the proxy statement for the special meeting of stockholders called for the purpose of approving the new compensation arrangement with Mr. Karkus

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

On February 16, 2018, the Board of Directors of the Company adopted and approved the Amended and Restated Bylaws of the Company principally to change the voting standard for matters presented for a vote of the Company's stockholders (other than the election of directors which remains a plurality vote) from the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter to a majority of the votes cast by the stockholders entitled to vote on the subject matter who are present in person or represented by proxy at the meeting. The Amended and Restated Bylaws also clarify that directors may be removed with or without cause, as required by Delaware law for companies without staggered boards.

The foregoing is a summary of the terms of the Amended and Restated Bylaws. The summary does not purport to be complete and is qualified in its entirety by reference to the Amended and Restated Bylaws, a copy of which is attached as Exhibit 3.1 and incorporated herein by reference. Additionally, a copy of the Amended and Restated Bylaws, marked to show changes to the former bylaws, are also included as Exhibit 3.1.1 hereto.

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

On February 20, 2018, the Company issued a press release announcing the Rights Plan Amendment and Mr. Karkus' new compensation arrangement. A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

No.	Description
3.1	<a href="#"><u>Amended and Restated Bylaws (as of February 16, 2018)</u></a>
3.1.1	<a href="#"><u>Amended and Restated Bylaws (marked to show changes to former Bylaws)</u></a>
4.1	<a href="#"><u>Amendment No. 2 to Amended and Restated Rights Agreement, by and between ProPhase Labs, Inc., and American Stock Transfer &amp; Trust Company, LLC, dated as of February 20, 2018</u></a>
10.1	<a href="#"><u>Amended and Restated 2015 Executive Employment Agreement with Ted Karkus, effective February 23, 2018</u></a>
10.2	<a href="#"><u>Stock Option Agreement with Ted Karkus pursuant to 2018 Stock Incentive Plan</u></a>
99.1	<a href="#"><u>Press release dated February 20, 2018</u></a>

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

**ProPhase Labs, Inc.**

By: /s/ Ted Karkus

Ted Karkus

Chairman of the Board, Chief Executive Officer and Director

Date: February 21, 2018

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**BYLAWS**

**OF**

**PROPHASE LABS, INC.**

**(As amended and restated February 16, 2018)**

**ARTICLE I – OFFICES**

Section 1. The registered office of Prophase Labs, Inc. (the “Corporation”) in the State of Delaware is 874 Walker Road, Suite C, Dover, DE 19904. The name of its registered agent at such address is United Corporate Services, Inc.

Section 2. The Corporation may have such offices within or without the State of Delaware as the Board of Directors may designate or as the business of the Corporation may require from time to time.

**ARTICLE II – STOCKHOLDERS**

Section 1. ANNUAL MEETING: The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected and any other proper business may be transacted.

Section 2. SPECIAL MEETINGS: In addition to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders may be called at any time by (a) the Chairman or (b) the Board of Directors pursuant to a resolution approved by a majority of the whole Board of Directors. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice to stockholders.

Section 3. PLACE OF MEETING: The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. NOTICE OF MEETING: Whenever stockholders are required or permitted to take any action at a meeting, a written notice of any such meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid. Notice of any meeting of the stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy without protesting, prior to or at the commencement of the meeting, the lack of proper notice to such stockholder, or who shall waive notice thereof as provided in Article XI of these Bylaws. Notice of adjournment of a meeting of the stockholders need not be given if the time and place to which it is adjourned are announced at such meeting, unless the adjournment is for more than 30 days or, after adjournment, a new record date is fixed for the adjourned meeting.

**Section 5. NOTICE BY ELECTRONIC TRANSMISSION:**

Any notice to stockholder given by the Corporation pursuant to any provision of these Bylaws, the Exchange Act (as defined in Article 1.15(a) below) or the Certificate of Incorporation is effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. The consent is revocable by the stockholder by written notice to the Corporation. The consent is revoked if:

- (a) The Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with the consent; and

(b) The inability to deliver by electronic transmission becomes known to the secretary, assistant secretary, transfer agent or other agent of the Corporation responsible for the giving of notice. However, the inadvertent failure to treat the inability to deliver notice by electronic transmission as a revocation does not invalidate any meeting or other action.

Notice given pursuant to this Article 1.5 shall be deemed given if:

- (a) By facsimile machine, when directed to a number at which the stockholder has consented to receive notice;
- (b) By electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (c) By posting on an electronic network together with separate notice to the stockholder of the specific posting, upon the later of:
  - (1) Such posting; and
  - (2) The giving of the separate notice; and
- (d) By any other form of electronic transmission, when directed to the stockholder.

As used in this Article 1.5, "electronic transmission" means any form of communication not directly involving the physical transmission of paper that:

- (a) Creates a record that may be retained, retrieved and reviewed by the recipient of the communication; and
- (b) May be directly reproduced in paper form by the recipient through an automated process.

Section 6. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE: For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) days. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of stockholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. But payment or allotment of dividends may not be made more than sixty days after the date on which the resolution is adopted. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Article 2.6, such determination shall apply to any adjournment thereof regardless of its length except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

Section 7. BOOKS AND ACCOUNTS: This Corporation shall keep and maintain at its principal office in this State:

- (a) A certified copy of its Certificate of Incorporation, and all amendments thereto.



(b) A certified copy of its Bylaws, and all amendments thereto.

(c) A stock ledger or a duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all persons who are stockholders of the Corporation, showing their places of residence, if known, and the number of shares held by them respectively; or

(d) In lieu of the stock ledger or duplication stock ledger specified in paragraph (c), a statement setting out the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address, including street and number, if any, where such stock ledger or duplicate stock ledger specified in this Article 1.7 is kept.

Section 8. QUORUM: A majority of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders; provided, however, that in the case of any vote to be taken by classes or series, the holders of a majority of the votes entitled to be cast by the stockholders of a particular class or series, present in person or by proxy, shall constitute a quorum of such class or series.

Section 9. ADJOURNMENTS; POSTPONEMENTS: In the absence of a quorum, holders of stock representing a majority of the voting power of all shares present in person or represented by proxy at the meeting, or the chairman of the meeting, may adjourn any meeting of stockholders, from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. Furthermore, after the meeting has been duly organized, the chairman of the meeting may adjourn any meeting of stockholders, from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Any previously scheduled meeting of stockholders may be postponed by the Board of Directors prior to the date previously scheduled for such meeting and the Corporation shall publicly announce such postponement.

Section 10. PROXIES: At any meeting of stockholders, a stockholder may vote in person or by proxy executed in writing by the stockholder or by his duly authorized attorney in fact. Proxies for use at any meeting of stockholders shall be in writing and filed with the Secretary, or such other officer as the Board of Directors may from time to time determine by resolution, before or at the time of the meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting who shall decide all questions touching upon the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the Chairman, in which event such inspector or inspectors shall decide all such questions.

A proxy shall not be valid after six months from the date of its execution, unless coupled with an interest, but no proxy shall be valid after seven years from the date of its execution, unless renewed or extended at any time before its expiration.

Section 11. VOTING AND ELECTIONS: Each stockholder of record of any series of Preferred Stock shall be entitled at each meeting of the stockholders to such number of votes, if any, for each share of such stock as may be fixed in the Certificate of Incorporation or in the resolution or resolutions adopted by the Board of Directors provide for the issuance of such Preferred Stock, and each stockholder of record of Common Stock shall be entitled at each meeting of the stockholders to one vote for each share of such stock, in each case, registered in such stockholder's name on the books of the Corporation: (i) on the date fixed pursuant to Section 6 of Article II of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or (ii) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice of such meeting is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

At each meeting of the stockholders, all corporate actions to be taken by vote of the stockholders (other than the election of directors) shall be authorized by a majority of the votes cast by the stockholders entitled to vote thereon who are present in person or represented by proxy, and where a separate vote by class or series is required, a majority of the votes cast by the stockholders of such class or series who are present in person or represented by proxy shall be the act of such class or series. Directors shall be elected by a plurality of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election of directors, provided a quorum is present.

Section 12. VOTING OF SHARES BY CERTAIN HOLDERS: Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the bylaws or a resolution of the board of directors of such corporation may prescribe, and a certified copy of the by-law or resolution is presented at the meeting.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of shares into his name. A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither treasury shares of its own stock held by the Corporation, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

Section 13. VOTING TRUST: A stockholder, by agreement in writing, may transfer his stock to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding 15 years upon the terms and conditions therein stated. The certificates of stock so transferred shall be surrendered and canceled and new certificates therefor issued to such trustee or trustees in which it shall appear that they are issued pursuant to such agreement, and in the entry of such ownership in the proper books of such corporation that fact shall also be noted, and thereupon such trustee or trustees may vote upon the stock so transferred during the terms of such agreement. A duplicate of every such agreement shall be filed in the principal office of the corporation and at all times during such terms be open to inspection by any stockholder or his attorney.

Section 14. ACTION WITHOUT MEETING: Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 15. NOMINATION OF DIRECTORS:

(a) In addition to the rights of the holders of any series of Preferred Stock, nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or (ii) by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Article 2.15 and at the time of the meeting, (B) is entitled to vote at the meeting for the election of directors, and (C) has complied with this Article 2.15 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(b) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Article 2.16) thereof in writing and in proper form to the Secretary of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article 2.15. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article 2.15.

To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if such special meeting is announced later than the ninetieth day prior to the date of such special meeting, the tenth (10th) day following the day on which public disclosure (as defined in Article 2.15) of the date of such special meeting was first made.

In no event shall any adjournment of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form for purposes of this Article 2.15, a stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Article 2.16(c)(i), except that for purposes of this Article 2.15 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Article 2.16(c)(i));

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Article 2.16(c)(ii), except that for purposes of this Article 2.15 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Article 2.16(c)(ii) and the disclosure in clause (L) of Article 2.16(c)(ii) shall be made with respect to the election of directors at the meeting);

(iii) A representation that the Nominating Person is a holder or record or beneficial owner of shares of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;

(iv) A representation as to whether the Nominating Person intends to solicit proxies in support of such person's nominee(s);

(v) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Article 2.15 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Article 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates and any other persons with whom such proposed nominee (or any of his or her respective affiliates and associates) is Acting in Concert (as defined in Article 2.16(c)), on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement as provided in Article 2.15(f); and

(vi) The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's corporate governance guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

For purposes of this Article 2.15, the term “Nominating Person” shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (iii) any affiliate or associate of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective affiliates or associates) is Acting in Concert.

(d) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Article 2.15 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Article 2.15. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Article 2.15, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(f) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Article 2.15) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (iii) in such proposed nominee’s individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(g) In addition to the requirements of this Article 2.15 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

Section 16. NOTICE OF BUSINESS AT ANNUAL MEETINGS:

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Article 2.16 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Article 2.16 as to such business. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting. Stockholders seeking to nominate persons for election to the Board must comply with Article 2.15 and this Article 2.16 shall not be applicable to nominations except as expressly provided in Article 2.15.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article 2.16. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the ninetieth (90th) day prior to such annual meeting or, if such annual meeting is announced later than the ninetieth day prior to the date of such annual meeting, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Article 2.16, a stockholder's notice to the Secretary shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Persons, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (i) and (ii) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation (“Synthetic Equity Interests”), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Article 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation (“Short Interests”), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, (F)(x) if such Proposing Person is not a natural person, the identity of the natural person or persons associated with such Proposing Person responsible for the formulation of and decision to propose the business to be brought before the meeting (such person or persons, the “Responsible Person”), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person, the qualifications and background of such Responsible Person and any material interests or relationships of such Responsible Person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, and (y) if such Proposing Person is a natural person, the qualifications and background of such natural person and any material interests or relationships of such natural person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, (G) any significant equity interests or any Synthetic Equity Interests or Short Interests in any principal competitor of the Corporation held by such Proposing Persons (H) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (J) any material transaction occurring during the prior twelve months between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, (K) a summary of any material discussions regarding the business proposed to be brought before the meeting (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including their names), and (L) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Article 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (L) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including their names) in connection with the proposal of such business by such stockholder;

(iv) A representation that the Proposing Person is a holder or record or beneficial owner of shares of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose the business specified in the notice; and

(v) A representation as to whether the Proposing Person intends to solicit proxies in support of such person's proposal.

For purposes of this Article 2.16, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective affiliates or associates) is Acting in Concert (as defined below).

A person shall be deemed to be "Acting in Concert" with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (A) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Article 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Article 2.16 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with this Article 2.16. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Article 2.16, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(f) This Article 2.16 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this Article 2.16 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Article 2.16 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) For purposes of these Bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Articles 13, 14 or 15(d) of the Exchange Act.

#### Section 17. CONDUCT OF MEETINGS:

(a) Meetings of stockholders shall be presided over by the Chairman or in the Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence by the President (if the President shall be a different individual than the Chief Executive Officer), or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.



(b) The Board of Directors of the Corporation may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board of Directors, the Chairman or the Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

### ARTICLE III – DIRECTORS

Section 1. NUMBER AND TERM. The business of this Corporation shall be managed by a Board of Directors which shall consist of not less than three (3) directors nor more than nine (9) directors, who need not be residents of the State of Delaware or stockholders of the Corporation. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors, which number shall initially be six (6). Except as otherwise provided in the Certificate of Incorporation, each director shall serve for a term ending on the date of the annual meeting of stockholders next following the annual meeting at which such director was elected. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 2. REGULAR MEETINGS: Each newly elected Board of Directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the stockholders. Notice of such meeting shall not be required. At the first meeting of the Board of Directors in each year at which a quorum shall be present, held next after the annual meeting of stockholders, the Board of Directors shall proceed to the election of the officers of the Corporation. Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

Section 3. SPECIAL MEETINGS: Special meetings of the Board of Directors may be called by the Chairman of the Board, or on the written request of any two directors, by the Secretary, in each case on at least twenty-four (24) hours personal, written, telegraphic, cable or wireless notice to each director. Such notice, or any waiver thereof pursuant to Article 3.4 hereof, shall state the time and place of the special meeting, but need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. If the day or date, time and place of a meeting of the Board of Directors has been announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting of the Board of Directors need not be given other than by announcement at the meeting at which adjournment is taken.

Section 4. NOTICE WAIVER: Notice of any meeting of the Board of Directors may be waived by any director either before, at or after such meeting orally or in a writing signed by such director. A director, by his or her attendance at any meeting of the Board of Directors, shall be deemed to have waived notice of such meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 5. QUORUM AND MANNER OF ACTING: Unless otherwise provided in the Certificate of Incorporation, a majority of the total number of directors then in office shall constitute a quorum for the transaction of business of the Board of Directors and the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 6. RESIGNATION. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. NEWLY CREATED DIRECTORSHIPS. A directorship to be filled by reason of any increase in the number of directors may be filled (i) by election at an annual or special meeting of stockholders called for that purpose or (ii) by the Board of Directors for a term of office continuing only until the next election of one or more directors by the stockholders.

Section 8. VACANCIES IN THE BOARD OF DIRECTORS. Any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 9. REMOVAL OF DIRECTORS. Except as may otherwise be provided by law, any director or the entire Board of Directors may be removed, with or without cause, at an annual meeting or at a special meeting called for that purpose, by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors.

Section 10. ACTION WITHOUT A MEETING; TELEPHONE CONFERENCE MEETING: Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board of Directors, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, either originally or in counterparts, consent thereto in writing. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation, subject to the requirement for notice of meetings, members of the Board of Directors, or members of any committee designated by the Board of Directors, may participate in a meeting of such Board of Directors or committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 10. EXECUTIVE AND OTHER COMMITTEES:

(a) The Board of Directors, by resolution adopted by a majority of the number of directors then in office may designate from among its members an executive committee and one or more other committees, each consisting of two or more directors, and each of which, to the extent provided in the resolution or in the charter or these Bylaws shall have and may exercise all of the authority of the Board of Directors except the power to:

(i) Declare dividends or distributions on stock;

(ii) Issue stock other than as provided in subsection (b) of this Article.

(iii) Recommend to the stockholders any action which requires stockholder approving, including, but not limited to, adopting an agreement of merger or consolidation, the sale, lease or exchange of all or substantially all of the Corporation's property and assets, a dissolution of the Corporation or a revocation of a dissolution of the Corporation; or

(iv) Amend the Certificate of Incorporation or the Bylaws.

(b) If the Board of Directors has given general authorization for the issuance of stock, a committee of the Board, in accordance with a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, may fix the terms of stock subject to classification or reclassification and the terms on which any stock may be issued, including all terms and conditions required or permitted to be established or authorized by the Board of Directors under the Delaware General Corporation Law.

(c) The appointment of any committee, the delegation of authority to it or action by it under that authority does not constitute of itself, compliance by any director not a member of the committee, with the standard provided by statute for the performance of duties of directors.

(d) Any committee designated pursuant to this Article 3.10 shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures, and shall meet at such times and at such place or places as may be provided by such rules, or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution.

(e) The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 11. CHAIRMAN OF THE BOARD: The Board shall elect from its members a Chairman, which Chairman shall preside at all meetings of the stockholders and the directors. The Chairman shall serve in such capacity until his or her successor is elected by the Board or until his or her earlier resignation or removal from the Board. He or she shall also perform such other duties the Board may assign to him or her from time to time.

Section 12. COMPENSATION: By resolution of the Board of Directors, each director may be paid his expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. PRESUMPTION OF ASSENT: A director of the Corporation who is present at a meeting of the board of Directors at which action on any corporate matter is taken unless he shall announce his dissent at the meeting and his dissent is entered in the minutes and he shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### ARTICLE IV – OFFICERS

Section 1. NUMBER, TITLES, AND TERM OF OFFICE: The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, President, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), a Treasurer, a Secretary, and such other officers as the Board of Directors may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person, unless the Certificate of Incorporation provides otherwise. Except for the Chairman of the Board, if any, no officers need be a director.

Section 2. SALARIES: The salaries or other compensation of the officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

Section 3. REMOVAL: Any officer or agent elected or appointed by the Board of Directors may be removed, either with or without cause, by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose, or at any regular meeting of the Board of Directors, provided the notice for such meeting shall specify that the matter of any such proposed removal will be considered at the meeting but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. VACANCIES: Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors.

Section 5. CHIEF EXECUTIVE OFFICER: The Chief Executive Officer shall, in the absence of the Chairman, preside at all meetings of the stockholders. Subject to the control of the Board of Directors and the executive committee (if any), the Chief Executive Officer shall have general executive charge, management and control of the properties, business and operations of the Corporation with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Corporation and may sign all certificates for shares of capital stock of the Corporation and shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

Section 6. PRESIDENT: Subject to such supervisory powers, if any, as may be given by the Board to the Chief Executive Officer, the President shall have general supervision, direction, and control of the business and other officers of the corporation. The President shall have the general powers and duties of management usually vested in the office of President of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws. If, for any reason, the Corporation does not have a Chairman or Chief Executive Officer, or such officers are unable to act, the President shall assume the duties of those officers.

Section 7. CHIEF OPERATING OFFICER: The Chief Operating Officer shall supervise the operation of the Corporation, subject to the policies and directions of the Board. He or she shall provide for the proper operation of the Corporation and oversee the internal interrelationship amongst any and all departments of the Corporation. He or she shall submit to the Chief Executive Officer, the President, the Chairman and the Board timely reports on the operations of the Corporation.

Section 8. CHIEF FINANCIAL OFFICER: The Chief Financial Officer shall have general supervision, direction and control of the financial affairs of the Corporation. He or she shall provide for the establishment of internal controls and see that adequate audits are currently and regularly made. He or she shall submit to the Chief Executive Officer, the President, the Chief Operating Officer, the Chairman and the Board timely statements of the accounts of the Corporation and the financial results of the operations thereof. The Chief Financial Officer shall perform such other duties and have such other powers as may be prescribed by the Board or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board and the Chief Executive Officer. In the absence of a named Treasurer, the Chief Financial Officer shall also have the powers and duties of the Treasurer as hereinafter set forth and shall be authorized and empowered to sign as Treasurer in any case where such officer's signature is required.

Section 9. VICE PRESIDENTS: In the absence of the President, or in the event of his inability or refusal to act, a Vice President designated by the Board of Directors shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions of the President. In the absence of a designation by the Board of Directors of a Vice President to perform the duties of the President, or in the event of his absence or inability or refusal to act, the Vice President who is present and who is senior in terms of time as a Vice President of the Corporation shall so act. The Vice Presidents shall perform such other duties and have such other powers as the chief executive officer or the Board of Directors may from time to time prescribe.

Section 10. TREASURER: The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Corporation, and he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors. He shall perform all acts incident to the position of Treasurer, subject to the control of the chief executive officer and the Board of Directors; and he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 11. ASSISTANT TREASURERS: Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 12. SECRETARY: The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of directors and the stockholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Corporation affix the seal of the Corporation to all contracts of the Corporation and attest the affixation of the seal of the Corporation thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Corporation; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Corporation during business hours; he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors; and he shall in general perform all acts incident to the office of Secretary, subject to the control of the chief executive officer and the Board of Directors.

Section 13. ASSISTANT SECRETARIES: Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

#### ARTICLE V – INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 1. INDEMNIFICATION: The Corporation shall indemnify and hold harmless, to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (an "indemnitee"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by an indemnitee in connection with such action, suit or proceeding if such indemnitee acted in good faith and in a manner such indemnitee reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful; provided, however, that, except as provided in Article 5.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the indemnitee did not act in good faith and in a manner which such indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. The right to indemnification conferred by this Article 5.1 shall vest at the time an individual becomes an indemnitee.

Section 2. RIGHT TO ADVANCEMENT OF EXPENSES: The right to indemnification conferred in Article 5.1 shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Article 5.2 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Articles 5.1 and 5.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the indemnitee’s heirs, executors, and administrators.

Section 3. RIGHT OF INDEMNITEE TO BRING SUIT: If a claim under Article 5.1 or 5.2 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to indemnification, or to such advancement of expenses, under this Article 5 or otherwise shall be on the Corporation.

Section 4. NON-EXCLUSIVITY OF RIGHTS: The rights to indemnification and to the advancement of expenses conferred in this Article 5 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the corporation’s Certificate of Incorporation, Bylaws, agreement, vote of stockholders, or disinterested directors or otherwise.

Section 5. INSURANCE: The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of the Corporation or another corporation, partnership, joint venture, trust, or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION: The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article 5 with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. AMENDMENT OR MODIFICATION: This Article 5 may be altered or amended at any time as provided in these Bylaws, but no such amendment shall have the effect of diminishing the rights of any person who is or was an officer or director as to any acts or omissions taken or omitted to be taken prior to the effective date of such amendment.

#### ARTICLE VI – CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. CONTRACTS: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. LOANS: No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. CHECKS, DRAFTS, ETC.: All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### ARTICLE VII CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. CERTIFICATES FOR SHARES: Notwithstanding any other provision in these Bylaws, any or all classes and series of shares of the Corporation, or any part thereof, may be represented by uncertificated shares, except that shares represented by a certificate that is issued and outstanding shall continue to be represented thereby until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof, a written notice containing the information required to be set forth or stated on certificates. The rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class or series shall be identical. If certificates for the shares of the Corporation are issued, each will be in such form as shall be determined by the Board of Directors. Such certificates shall be signed by the president or vice president and countersigned by the secretary or an assistant secretary and sealed with the Corporation seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimile signatures if the certificate is manually signed on behalf of a transfer agent or a registrar other than the Corporation or an employee of the Corporation. Each certificate for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificates shall be issued until the former certificates for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.



Section 2. TRANSFER OF SHARES: Transfer of shares of the Corporation shall be made only on the stock transfer books of the Corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed by the Corporation to be the owner thereof for all purposes.

#### ARTICLE VIII – FISCAL YEAR

Section 1. The fiscal year of the Corporation shall be determined by the Board of Directors.

#### ARTICLE IX – DIVIDENDS

Section 1. The Board of Directors may, from time to time, declare and the Corporation may pay dividends on its outstanding shares in the manner, and upon the terms and conditions provided by law and its Certificate of Incorporation.

#### ARTICLE X – CORPORATE SEAL

Section 1. The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation, the year of its incorporation and the words, “Corporate Seal,” and “Delaware.”

#### ARTICLE XI – WAIVER OF NOTICE

Section 1. Whenever notice is required to be given by law, the Certificate of Incorporation or under any of the provisions of these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or the Bylaws.

#### ARTICLE XII – FORUM FOR ADJUDICATION OF DISPUTES

Section 1. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or Bylaws (as either may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery in the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware). If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a “Foreign Action”) in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

#### ARTICLE XIII – AMENDMENTS

Section 1. Stockholders of the Corporation holding at least 66 2/3% of the Corporation’s outstanding voting stock shall have the power to adopt, amend or repeal the Bylaws. To the extent provided in the Corporation’s Certificate of Incorporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal the Bylaws of the Corporation.



**BYLAWS****OF****PROPHASE LABS, INC.****June 19, 2015 (As amended and restated February 16, 2018)**

## ARTICLE I – OFFICES

Section 1. The registered office of Prophase Labs, Inc. (the “Corporation”) in the State of Delaware is 874 Walker Road, Suite C, Dover, DE 19904. The name of its registered agent at such address is United Corporate Services, Inc.

Section 2. The Corporation may have such offices within or without the State of Delaware as the Board of Directors may designate or as the business of the Corporation may require from time to time.

## ARTICLE II – STOCKHOLDERS

Section 1. ANNUAL MEETING: The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected and any other proper business may be transacted.

Section 2. SPECIAL MEETINGS: ~~Special~~In addition to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders may be called at any time by (a) the Chairman or (b) the Board of Directors pursuant to a resolution approved by a majority of the whole Board of Directors. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice to stockholders.

Section 3. PLACE OF MEETING: The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors.

Section 4. NOTICE OF MEETING: Whenever stockholders are required or permitted to take any action at a meeting, a written notice of any such meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid. Notice of any meeting of the stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy without protesting, prior to or at the commencement of the meeting, the lack of proper notice to such stockholder, or who shall waive notice thereof as provided in Article XI of these Bylaws. Notice of adjournment of a meeting of the stockholders need not be given if the time and place to which it is adjourned are announced at such meeting, unless the adjournment is for more than 30 days or, after adjournment, a new record date is fixed for the adjourned meeting.

## Section 5. NOTICE BY ELECTRONIC TRANSMISSION:

Any notice to stockholder given by the Corporation pursuant to any provision of these Bylaws, the Exchange Act (as defined in Article 1.15(a) below) or the Certificate of Incorporation is effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. The consent is revocable by the stockholder by written notice to the Corporation. The consent is revoked if:

(a) The Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with the consent; and

(b) The inability to deliver by electronic transmission becomes known to the secretary, assistant secretary, transfer agent or other agent of the Corporation responsible for the giving of notice. However, the inadvertent failure to treat the inability to deliver notice by electronic transmission as a revocation does not invalidate any meeting or other action.

Notice given pursuant to this Article 1.5 shall be deemed given if:

(a) By facsimile machine, when directed to a number at which the stockholder has consented to receive notice;

(b) By electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(c) By posting on an electronic network together with separate notice to the stockholder of the specific posting, upon the later of:

(1) Such posting; and

(2) The giving of the separate notice; and

(d) By any other form of electronic transmission, when directed to the stockholder.

As used in this Article 1.5, "electronic transmission" means any form of communication not directly involving the physical transmission of paper that:

(a) Creates a record that may be retained, retrieved and reviewed by the recipient of the communication; and

(b) May be directly reproduced in paper form by the recipient through an automated process.

Section 6. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE: For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) days. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of stockholders, such date in any case to be not more than sixty (60) days, and, in case of a meeting of stockholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of stockholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders. But payment or allotment of dividends may not be made more than sixty days after the date on which the resolution is adopted. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Article 2.6, such determination shall apply to any adjournment thereof regardless of its length except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

Section 7. BOOKS AND ACCOUNTS: This Corporation shall keep and maintain at its principal office in this State:

(a) A certified copy of its Certificate of Incorporation, and all amendments thereto.

(b) A certified copy of its Bylaws, and all amendments thereto.

(c) A stock ledger or a duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all persons who are stockholders of the Corporation, showing their places of residence, if known, and the number of shares held by them respectively; or

(d) In lieu of the stock ledger or duplication stock ledger specified in paragraph (c), a statement setting out the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address, including street and number, if any, where such stock ledger or duplicate stock ledger specified in this Article 1.7 is kept.

Section 8. QUORUM: A majority of the outstanding shares of the Corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. ~~If less than a majority of the outstanding shares are represented at a meeting, a majority of the shares represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted; provided, however, that in the case of any vote to be taken by classes or series, the holders of a majority of the votes entitled to be cast by the stockholders of a particular class or series, present in person or by proxy, shall constitute a quorum of such class or series.~~

Section 9. ADJOURNMENTS: POSTPONEMENTS: ~~In the absence of a quorum, holders of stock representing a majority of the voting power of all shares present in person or represented by proxy at the meeting, or the chairman of the meeting, may adjourn any meeting of stockholders, from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. Furthermore, after the meeting has been duly organized, the chairman of the meeting may adjourn any meeting of stockholders, from time to time, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting as originally noticed. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Any previously scheduled meeting of stockholders may be postponed by the Board of Directors prior to the date previously scheduled for such meeting and the Corporation shall publicly announce such postponement.~~

Section 9.10. PROXIES: At any meeting of stockholders, a stockholder may vote in person or by proxy executed in writing by the stockholder or by his duly authorized attorney in fact. Proxies for use at any meeting of stockholders shall be in writing and filed with the Secretary, or such other officer as the Board of Directors may from time to time determine by resolution, before or at the time of the meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting who shall decide all questions touching upon the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the Chairman, in which event such inspector or inspectors shall decide all such questions.

A proxy shall not be valid after six months from the date of its execution, unless coupled with an interest, but no proxy shall be valid after seven years from the date of its execution, unless renewed or extended at any time before its expiration.

~~Section 10. VOTING AND ELECTIONS: Unless otherwise required by law or provided~~ Section 11. VOTING AND ELECTIONS: Each stockholder of record of any series of Preferred Stock shall be entitled at each meeting of the stockholders to such number of votes, if any, for each share of such stock as may be fixed in the Certificate of Incorporation, each stockholder shall have or in the resolution or resolutions adopted by the Board of Directors provide for the issuance of such Preferred Stock, and each stockholder of record of Common Stock shall be entitled at each meeting of the stockholders to one vote for each share of such stock entitled to vote which is, in each case, registered in his name on the record date for the meeting such stockholder's name on the books of the Corporation: (i) on the date fixed pursuant to Section 6 of Article II of these Bylaws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or (ii) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice of such meeting is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

At each meeting of the stockholders, all corporate actions to be taken by vote of the stockholders (other than the election of directors) shall be authorized by a majority of the votes cast by the stockholders entitled to vote thereon who are present in person or represented by proxy, and where a separate vote by class or series is required, a majority of the votes cast by the stockholders of such class or series who are present in person or represented by proxy shall be the act of such class or series. Directors shall be elected by a plurality of the votes cast at a meeting of the stockholders by the holders of stock entitled to vote in the election of directors, provided a quorum is present.

~~Section 11. Section 12. VOTING OF SHARES BY CERTAIN HOLDERS:~~ Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the bylaws or a resolution of the board of directors of such corporation may prescribe, and a certified copy of the by-law or resolution is presented at the meeting.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of shares into his name. A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither treasury shares of its own stock held by the Corporation, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

~~Section 12. Section 13. VOTING TRUST:~~ A stockholder, by agreement in writing, may transfer his stock to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding 15 years upon the terms and conditions therein stated. The certificates of stock so transferred shall be surrendered and canceled and new certificates therefor issued to such trustee or trustees in which it shall appear that they are issued pursuant to such agreement, and in the entry of such ownership in the proper books of such corporation that fact shall also be noted, and thereupon such trustee or trustees may vote upon the stock so transferred during the terms of such agreement. A duplicate of every such agreement shall be filed in the principal office of the corporation and at all times during such terms be open to inspection by any stockholder or his attorney.

~~Section 13. Section 14. ACTION WITHOUT MEETING:~~ Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

~~Section 14. Section 15. NOMINATION OF DIRECTORS:~~

~~(a) Nominations~~ In addition to the rights of the holders of any series of Preferred Stock, nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, or (ii) by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Article ~~2.14~~ 2.15 and at the time of the meeting, (B) is entitled to vote at the meeting for the election of directors, and (C) has complied with this Article ~~2.14~~ 2.15 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(b) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Article ~~2-152.16~~) thereof in writing and in proper form to the Secretary of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article ~~2-142.15~~. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article ~~2-142.15~~.

To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if such special meeting is announced later than the ninetieth day prior to the date of such special meeting, the tenth (10th) day following the day on which public disclosure (as defined in Article 2.15) of the date of such special meeting was first made.

In no event shall any adjournment of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form for purposes of this Article ~~2-142.15~~, a stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Article ~~2-152.16~~(c)(i), except that for purposes of this Article ~~2-142.15~~ the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Article ~~2-152.16~~(c)(i));

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Article ~~2-152.16~~(c)(ii), except that for purposes of this Article ~~2-142.15~~ the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Article ~~2-152.16~~(c)(ii) and the disclosure in clause (L) of Article ~~2-152.16~~(c)(ii) shall be made with respect to the election of directors at the meeting);

(iii) A representation that the Nominating Person is a holder or record or beneficial owner of shares of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;

(iv) A representation as to whether the Nominating Person intends to solicit proxies in support of such person's nominee(s);

(v) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Article ~~2-142.15~~ if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Article 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates and any other persons with whom such proposed nominee (or any of his or her respective affiliates and associates) is Acting in Concert (as defined in Article ~~2-152.16~~(c)), on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement as provided in Article ~~2-142.15~~(f); and

(~~iv~~v) The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's corporate governance guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

For purposes of this Article ~~2-142.15~~, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (iii) any affiliate or associate of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective affiliates or associates) is Acting in Concert.

(d) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Article ~~2-142.15~~ shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Article ~~2-142.15~~. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Article ~~2-142.15~~, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(f) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Article ~~2-142.15~~) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (iii) in such proposed nominee's individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.



(g) In addition to the requirements of this Article ~~2-14.2.15~~ with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

Section ~~4.5.16~~ NOTICE OF BUSINESS AT ANNUAL MEETINGS:

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Article ~~2-15.2.16~~ and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Article ~~2-15.2.16~~ as to such business. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting. Stockholders seeking to nominate persons for election to the Board must comply with Article ~~2-14.2.15~~ and this Article ~~2-15.2.16~~ shall not be applicable to nominations except as expressly provided in Article ~~2-14.2.15~~.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation either by personal delivery or by United States mail, postage prepaid, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Article ~~2-15.2.16~~. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the ninetieth (90th) day prior to such annual meeting or, if such ~~special annual~~ meeting is announced later than the ninetieth day prior to the date of such ~~special annual~~ meeting, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Article ~~2-15.2.16~~, a stockholder's notice to the Secretary shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Persons, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (i) and (ii) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation (“Synthetic Equity Interests”), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Article 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation (“Short Interests”), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, (F)(x) if such Proposing Person is not a natural person, the identity of the natural person or persons associated with such Proposing Person responsible for the formulation of and decision to propose the business to be brought before the meeting (such person or persons, the “Responsible Person”), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person, the qualifications and background of such Responsible Person and any material interests or relationships of such Responsible Person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, and (y) if such Proposing Person is a natural person, the qualifications and background of such natural person and any material interests or relationships of such natural person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, (G) any significant equity interests or any Synthetic Equity Interests or Short Interests in any principal competitor of the Corporation held by such Proposing Persons (H) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (J) any material transaction occurring during the prior twelve months between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, (K) a summary of any material discussions regarding the business proposed to be brought before the meeting (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including their names), and (L) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Article 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (L) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; ~~and~~

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including their names) in connection with the proposal of such business by such stockholder;

(iv) A representation that the Proposing Person is a holder or record or beneficial owner of shares of the Corporation entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose the business specified in the notice; and

(v) A representation as to whether the Proposing Person intends to solicit proxies in support of such person's proposal

For purposes of this Article ~~2-15~~2.16, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective affiliates or associates) is Acting in Concert (as defined below).

A person shall be deemed to be "Acting in Concert" with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (A) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Article 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Article ~~2-15~~2.16 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting, if practicable (or, if not practicable, on the first practicable date prior to) any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with this Article ~~2-15-2.16~~. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Article ~~2-15-2.16~~, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(f) This Article ~~2-15-2.16~~ is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this Article ~~2-15-2.16~~ with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Article ~~2-15-2.16~~ shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) For purposes of these Bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Articles 13, 14 or 15(d) of the Exchange Act.

#### Section ~~4-6-17~~ CONDUCT OF MEETINGS:

(a) Meetings of stockholders shall be presided over by the Chairman or in the Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence by the President (if the President shall be a different individual than the Chief Executive Officer), or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board of Directors of the Corporation may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board of Directors, the Chairman or the Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

#### ARTICLE III – DIRECTORS

Section 1. NUMBER AND TERM. The business of this Corporation shall be managed by a Board of Directors which shall consist of not less than three (3) directors nor more than nine (9) directors, who need not be residents of the State of Delaware or stockholders of the Corporation. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors, which number shall initially be six (6). Except as otherwise provided in the Certificate of Incorporation, each director shall serve for a term ending on the date of the annual meeting of stockholders next following the annual meeting at which such director was elected. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 2. REGULAR MEETINGS: Each newly elected Board of Directors may hold its first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after and at the same place as the annual meeting of the stockholders. Notice of such meeting shall not be required. At the first meeting of the Board of Directors in each year at which a quorum shall be present, held next after the annual meeting of stockholders, the Board of Directors shall proceed to the election of the officers of the Corporation. Regular meetings of the Board of Directors shall be held at such times and places as shall be designated from time to time by resolution of the Board of Directors. Notice of such regular meetings shall not be required.

Section 3. SPECIAL MEETINGS: Special meetings of the Board of Directors may be called by the Chairman of the Board, or on the written request of any two directors, by the Secretary, in each case on at least twenty-four (24) hours personal, written, telegraphic, cable or wireless notice to each director. Such notice, or any waiver thereof pursuant to Article 3.4 hereof, shall state the time and place of the special meeting, but need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. If the day or date, time and place of a meeting of the Board of Directors has been announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting of the Board of Directors need not be given other than by announcement at the meeting at which adjournment is taken.

Section 4. NOTICE WAIVER: Notice of any meeting of the Board of Directors may be waived by any director either before, at or after such meeting orally or in a writing signed by such director. A director, by his or her attendance at any meeting of the Board of Directors, shall be deemed to have waived notice of such meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 5. QUORUM AND MANNER OF ACTING: Unless otherwise provided in the Certificate of Incorporation, a majority of the total number of directors then in office shall constitute a quorum for the transaction of business of the Board of Directors and the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 6. RESIGNATION. Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. NEWLY CREATED DIRECTORSHIPS. A directorship to be filled by reason of any increase in the number of directors may be filled (i) by election at an annual or special meeting of stockholders called for that purpose or (ii) by the Board of Directors for a term of office continuing only until the next election of one or more directors by the stockholders.

Section 7.8. VACANCIES IN THE BOARD OF DIRECTORS. Any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 8.9. REMOVAL OF DIRECTORS. ~~Any~~ Except as may otherwise be provided by law, any director, or the entire Board of Directors, may be removed ~~from office at any time, but only for cause and only, with or without cause, at an annual meeting or at a special meeting called for that purpose~~ by the affirmative vote of the holders of at least two-thirds of the voting power of the then outstanding shares of the Corporation majority of the shares then entitled to vote generally in that an election of directors, voting together as a single class.

Section 9.10. ACTION WITHOUT A MEETING; TELEPHONE CONFERENCE MEETING: Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board of Directors, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, either originally or in counterparts, consent thereto in writing. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation, subject to the requirement for notice of meetings, members of the Board of Directors, or members of any committee designated by the Board of Directors, may participate in a meeting of such Board of Directors or committee, as the case may be, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 10. EXECUTIVE AND OTHER COMMITTEES:

(a) The Board of Directors, by resolution adopted by a majority of the number of directors then in office may designate from among its members an executive committee and one or more other committees, each consisting of two or more directors, and each of which, to the extent provided in the resolution or in the charter or these Bylaws shall have and may exercise all of the authority of the Board of Directors except the power to:

- (i) Declare dividends or distributions on stock;
- (ii) Issue stock other than as provided in subsection (b) of this Article.

(iii) Recommend to the stockholders any action which requires stockholder approving, including, but not limited to, adopting an agreement of merger or consolidation, the sale, lease or exchange of all or substantially all of the Corporation's property and assets, a dissolution of the Corporation or a revocation of a dissolution of the Corporation; or

(iv) Amend the Certificate of Incorporation or the Bylaws.

(b) If the Board of Directors has given general authorization for the issuance of stock, a committee of the Board, in accordance with a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, may fix the terms of stock subject to classification or reclassification and the terms on which any stock may be issued, including all terms and conditions required or permitted to be established or authorized by the Board of Directors under the Delaware General Corporation Law.

(c) The appointment of any committee, the delegation of authority to it or action by it under that authority does not constitute of itself, compliance by any director not a member of the committee, with the standard provided by statute for the performance of duties of directors.

(d) Any committee designated pursuant to this Article 3.10 shall choose its own chairman, shall keep regular minutes of its proceedings and report the same to the Board of Directors when requested, shall fix its own rules or procedures, and shall meet at such times and at such place or places as may be provided by such rules, or by resolution of such committee or resolution of the Board of Directors. At every meeting of any such committee, the presence of a majority of all the members thereof shall constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution.

(e) The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 11. CHAIRMAN OF THE BOARD: The Board shall elect from its members a Chairman, which Chairman shall preside at all meetings of the stockholders and the directors. The Chairman shall serve in such capacity until his or her successor is elected by the Board or until his or her earlier resignation or removal from the Board. He or she shall also perform such other duties the Board may assign to him or her from time to time.

Section 12. COMPENSATION: By resolution of the Board of Directors, each director may be paid his expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as director or a fixed sum for attendance at each meeting of the Board of Directors or both. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. PRESUMPTION OF ASSENT: A director of the Corporation who is present at a meeting of the board of Directors at which action on any corporate matter is taken unless he shall announce his dissent at the meeting and his dissent is entered in the minutes and he shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### ARTICLE IV – OFFICERS

Section 1. NUMBER, TITLES, AND TERM OF OFFICE: The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, President, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), a Treasurer, a Secretary, and such other officers as the Board of Directors may from time to time elect or appoint. Each officer shall hold office until his successor shall be duly elected and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same person, unless the Certificate of Incorporation provides otherwise. Except for the Chairman of the Board, if any, no officers need be a director.

Section 2. SALARIES: The salaries or other compensation of the officers and agents of the Corporation shall be fixed from time to time by the Board of Directors.

Section 3. REMOVAL: Any officer or agent elected or appointed by the Board of Directors may be removed, either with or without cause, by the vote of a majority of the whole Board of Directors at a special meeting called for the purpose, or at any regular meeting of the Board of Directors, provided the notice for such meeting shall specify that the matter of any such proposed removal will be considered at the meeting but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. VACANCIES: Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors.

Section 5. CHIEF EXECUTIVE OFFICER: The Chief Executive Officer shall, in the absence of the Chairman, preside at all meetings of the stockholders. Subject to the control of the Board of Directors and the executive committee (if any), the Chief Executive Officer shall have general executive charge, management and control of the properties, business and operations of the Corporation with all such powers as may be reasonably incident to such responsibilities; he may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Corporation and may sign all certificates for shares of capital stock of the Corporation and shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

Section 6. PRESIDENT: Subject to such supervisory powers, if any, as may be given by the Board to the Chief Executive Officer, the President shall have general supervision, direction, and control of the business and other officers of the corporation. The President shall have the general powers and duties of management usually vested in the office of President of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws. If, for any reason, the Corporation does not have a Chairman or Chief Executive Officer, or such officers are unable to act, the President shall assume the duties of those officers.

Section 7. CHIEF OPERATING OFFICER: The Chief Operating Officer shall supervise the operation of the Corporation, subject to the policies and directions of the Board. He or she shall provide for the proper operation of the Corporation and oversee the internal interrelationship amongst any and all departments of the Corporation. He or she shall submit to the Chief Executive Officer, the President, the Chairman and the Board timely reports on the operations of the Corporation.

Section 8. CHIEF FINANCIAL OFFICER: The Chief Financial Officer shall have general supervision, direction and control of the financial affairs of the Corporation. He or she shall provide for the establishment of internal controls and see that adequate audits are currently and regularly made. He or she shall submit to the Chief Executive Officer, the President, the Chief Operating Officer, the Chairman and the Board timely statements of the accounts of the Corporation and the financial results of the operations thereof. The Chief Financial Officer shall perform such other duties and have such other powers as may be prescribed by the Board or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board and the Chief Executive Officer. In the absence of a named Treasurer, the Chief Financial Officer shall also have the powers and duties of the Treasurer as hereinafter set forth and shall be authorized and empowered to sign as Treasurer in any case where such officer's signature is required.



Section 9. VICE PRESIDENTS: In the absence of the President, or in the event of his inability or refusal to act, a Vice President designated by the Board of Directors shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions of the President. In the absence of a designation by the Board of Directors of a Vice President to perform the duties of the President, or in the event of his absence or inability or refusal to act, the Vice President who is present and who is senior in terms of time as a Vice President of the Corporation shall so act. The Vice Presidents shall perform such other duties and have such other powers as the chief executive officer or the Board of Directors may from time to time prescribe.

Section 10. TREASURER: The Treasurer shall have responsibility for the custody and control of all the funds and securities of the Corporation, and he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors. He shall perform all acts incident to the position of Treasurer, subject to the control of the chief executive officer and the Board of Directors; and he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 11. ASSISTANT TREASURERS: Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 12. SECRETARY: The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of directors and the stockholders, in books provided for that purpose; he shall attend to the giving and serving of all notices; he may in the name of the Corporation affix the seal of the Corporation to all contracts of the Corporation and attest the affixation of the seal of the Corporation thereto; he may sign with the other appointed officers all certificates for shares of capital stock of the Corporation; he shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the Corporation during business hours; he shall have such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the Board of Directors; and he shall in general perform all acts incident to the office of Secretary, subject to the control of the chief executive officer and the Board of Directors.

Section 13. ASSISTANT SECRETARIES: Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to him by the chief executive officer or the Board of Directors. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

#### ARTICLE V – INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 1. INDEMNIFICATION: The Corporation shall indemnify and hold harmless, to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (an "indemnitee"), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by an indemnitee in connection with such action, suit or proceeding if such indemnitee acted in good faith and in a manner such indemnitee reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful; provided, however, that, except as provided in Article 5.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the indemnitee did not act in good faith and in a manner which such indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. The right to indemnification conferred by this Article 5.1 shall vest at the time an individual becomes an indemnitee.

Section 2. RIGHT TO ADVANCEMENT OF EXPENSES: The right to indemnification conferred in Article 5.1 shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Article 5.2 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Articles 5.1 and 5.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the indemnitee’s heirs, executors, and administrators.

Section 3. RIGHT OF INDEMNITEE TO BRING SUIT: If a claim under Article 5.1 or 5.2 is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to indemnification, or to such advancement of expenses, under this Article 5 or otherwise shall be on the Corporation.

Section 4. NON-EXCLUSIVITY OF RIGHTS: The rights to indemnification and to the advancement of expenses conferred in this Article 5 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the corporation’s Certificate of Incorporation, Bylaws, agreement, vote of stockholders, or disinterested directors or otherwise.

Section 5. INSURANCE: The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of the Corporation or another corporation, partnership, joint venture, trust, or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION: The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article 5 with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. AMENDMENT OR MODIFICATION: This Article 5 may be altered or amended at any time as provided in these Bylaws, but no such amendment shall have the effect of diminishing the rights of any person who is or was an officer or director as to any acts or omissions taken or omitted to be taken prior to the effective date of such amendment.

#### ARTICLE VI – CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. CONTRACTS: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. LOANS: No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. CHECKS, DRAFTS, ETC.: All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

#### ARTICLE VII CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. CERTIFICATES FOR SHARES: Notwithstanding any other provision in these Bylaws, any or all classes and series of shares of the Corporation, or any part thereof, may be represented by uncertificated shares, except that shares represented by a certificate that is issued and outstanding shall continue to be represented thereby until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof, a written notice containing the information required to be set forth or stated on certificates. The rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class or series shall be identical. If certificates for the shares of the Corporation are issued, each will be in such form as shall be determined by the Board of Directors. Such certificates shall be signed by the president or vice president and countersigned by the secretary or an assistant secretary and sealed with the Corporation seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimile signatures if the certificate is manually signed on behalf of a transfer agent or a registrar other than the Corporation or an employee of the Corporation. Each certificate for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificates shall be issued until the former certificates for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate, a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

Section 2. TRANSFER OF SHARES: Transfer of shares of the Corporation shall be made only on the stock transfer books of the Corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed by the Corporation to be the owner thereof for all purposes.

#### ARTICLE VIII – FISCAL YEAR

Section 1. The fiscal year of the Corporation shall be determined by the Board of Directors.

#### ARTICLE IX – DIVIDENDS

Section 1. The Board of Directors may, from time to time, declare and the Corporation may pay dividends on its outstanding shares in the manner, and upon the terms and conditions provided by law and its Certificate of Incorporation.

#### ARTICLE X – CORPORATE SEAL

Section 1. The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation, the year of its incorporation and the words, “Corporate Seal,” and “Delaware.”

#### ARTICLE XI – WAIVER OF NOTICE

Section 1. Whenever notice is required to be given by law, the Certificate of Incorporation or under any of the provisions of these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or the Bylaws.

#### ARTICLE XII – FORUM FOR ADJUDICATION OF DISPUTES

Section 1. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or Bylaws (as either may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery in the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware). If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a “Foreign Action”) in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

ARTICLE XIII – AMENDMENTS

Section 1. Stockholders of the Corporation holding at least 66 2/3% of the Corporation's outstanding voting stock shall have the power to adopt, amend or repeal the Bylaws. To the extent provided in the Corporation's Certificate of Incorporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal the Bylaws of the Corporation.



**AMENDMENT NO. 2 TO  
AMENDED AND RESTATED RIGHTS AGREEMENT**

This AMENDMENT NO. 2 (this "Amendment") to the Amended and Restated Rights Agreement, dated as of June 18, 2014 (the "Rights Agreement"), by and between ProPhase Labs, Inc., a Delaware corporation (the "Company"), and American Stock Transfer & Trust Company, LLC, as rights agent (the "Rights Agent"), is entered into February 20, 2018. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Rights Agreement.

WITNESSETH:

WHEREAS, pursuant to Section 27(a) of the Rights Agreement, the Company and the Rights Agent may, if the Company so directs, prior to the Distribution Date, supplement or amend any provision of the Rights Agreement without the approval of any holders of the shares of Common Stock;

WHEREAS, the Distribution Date has not occurred;

WHEREAS, the Company desires to amend the Rights Agreement as set forth herein; and

WHEREAS, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders to amend the Rights Agreement as hereinafter set forth and has duly approved this Amendment and authorized its execution and delivery.

NOW, THEREFORE, the Company and the Rights Agent hereby agree as follows:

1. Amendments

a. From and after the execution and delivery of this Amendment, the definition of the term "Final Expiration Date" in Section 1 of the Rights Agreement is amended and restated in its entirety to read as follows:

"Final Expiration Date" means the Close of Business on February 20, 2018.

b. Exhibit A to the Rights Agreement is amended by deleting the reference to "June 18, 2024" in the Form of Rights Certificate and substituting therefor "February 20, 2018".

2. Benefits. All of the covenants and provisions of this Amendment by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

3. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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4. Effectiveness and Effect of Amendment

a. Notwithstanding anything to the contrary set forth in Section 27, this Amendment shall become effective as of the date first written above.

b. Except as specifically modified herein, the Rights Agreement shall not otherwise be supplemented or amended by virtue of this Amendment, but shall remain in full force and effect. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, constitute a waiver or amendment of any provision of the Rights Agreement. Upon and after the effectiveness of this Amendment, each reference in the Rights Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Rights Agreement, and each reference in any other document to "the Rights Agreement", "thereunder", "thereof" or words of like import referring to the Rights Agreement, shall mean and be a reference to the Rights Agreement as modified hereby.

5. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of Nevada and for all purposes shall be governed by and construed in accordance with the laws of the State of Nevada applicable to contracts made and to be performed entirely within State of Nevada.

6. Counterparts. This Rights Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

7. Descriptive Headings. Descriptive headings of the several Sections of this Rights Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph hereof.

**COMPANY:**

PROPHASE LABS, INC.

By: /s/ Ted Karkus

Name: Ted Karkus

Title: Chief Executive Officer

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[Signature Page to Rights Agreement Amendment]

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**RIGHTS AGENT:**

AMERICAN STOCK TRANSFER& TRUST COMPANY, LLC

By: /s/ Paula Caroppoli

Name: Paula Caroppoli

Title: Senior Vice President

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[Signature Page to Rights Agreement Amendment]

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**PROPHASE LABS, INC.**  
**AMENDED AND RESTATED**  
**2015 EXECUTIVE EMPLOYMENT AGREEMENT**

This Employment Agreement (the "Agreement") is made as of February 23, 2018 ("Effective Date") by and between **ProPhase Labs, Inc.**, a corporation organized under the laws of the State of Delaware ("PPL" or the "Company"), and **Ted Karkus** ("Executive") and, subject to Section 1(b) below, amends and restates the May 29, 2015 Executive Employment Agreement between PPL and Executive ("2015 Employment Agreement").

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Appointment, Title and Duties, Shareholder Approval.

(a) Executive currently serves as its Chief Executive Officer and desires to continue in such position based upon the terms and conditions set forth herein. In such capacity, Executive shall report solely to the Board of the Company (the "Board"), and shall have such duties, powers and responsibilities as are customarily assigned to a Chief Executive Officer. In addition, Executive shall have such other duties and responsibilities as the Board may reasonably assign him, but only with his consent, including serving with the consent or at the request of the Board as an officer or on the board of directors of affiliated corporations, *provided* that such duties are commensurate with and customary for a senior executive officer bearing Executive's experience, qualifications, title and position.

(b) Approval By Shareholders. Notwithstanding any other provision in this Agreement, this Agreement will be null and void if it is not approved by a majority of the shares voted to approve the Agreement (excluding the shares voted by Executive) at a meeting of stockholders of the Company to be held no later than September 30, 2018 ("Approval"). In the event that this Agreement is not so approved by the shareholders of the Company by September 30, 2018, the 2015 Employment Agreement shall be reinstated in its entirety; and the Initial Base Salary under the 2015 Employment Agreement shall be reinstated, retroactive to the Effective Date. In the event the 2015 Employment Agreement is thereby reinstated, any amounts of Initial Salary under the 2015 Employment Agreement not previously paid to Executive shall be immediately paid to Executive.

2. Term of Agreement. The term of this Agreement shall commence as of the Effective Date and shall extend and continue unless and until it is terminated in accordance with the terms of this Agreement.

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3. Acceptance of Position. Executive accepts the position of Chief Executive Officer, and agrees that during the term of this Agreement he will faithfully perform his duties and, except as expressly approved by the Board, will devote substantially all of his business time to the business and affairs of PPL, and will not during the term of this agreement engage, for his own account or for the account of any other person or entity, in a business which competes with PPL. It is acknowledged and agreed that Executive may serve as an officer and/or director of companies in which PPL owns voting or non-voting stock or other securities. In addition, it is acknowledged and agreed that Executive may, from time to time, serve as a member of the board of directors of other companies which do not compete with PPL, provided that Executive has provided the Board with notice of election to any such board of directors. Any compensation or remuneration which Executive receives in consideration of service on the board of directors of other companies shall be the sole and exclusive property of Executive, and PPL shall have no right or entitlement at any time to any such compensation or remuneration. Nothing herein shall preclude Executive from serving on the board of directors or similar governing body of any not for profit or philanthropic organization. It is understood and agreed by the parties that Executive has in the past, and shall be permitted during the term of this Agreement, to perform his services in part from the Company's offices, and also in part from an office Executive maintains at his home, consistent with the practices Executive and the Company have followed and applied prior to the Effective Date.

4. Salary and Benefits.

(a) From the Effective Date through February 22, 2021, Executive voluntarily agrees to reduce his salary from the rate set forth in the 2015 Employment Agreement (*i.e.*, not less than six-hundred seventy five thousand dollars (\$675,000) per annum) to a base salary at a rate of one hundred twenty five thousand dollars (\$125,000) per annum ("Term Base Salary"), paid in approximately equal installments at intervals based on any reasonable Company policy. PPL agrees from time to time to consider increases in the Term Base Salary in the discretion of the Board. Any increase in the Term Base Salary, once granted, shall automatically amend this Agreement to provide that thereafter Executive's Term Base Salary shall not be less than the annual amount of his increased Term Base Salary.

Unless otherwise determined by mutual agreement of the Company and Executive, on February 22, 2021 and thereafter, Executive's salary shall increase from the Term Base Salary to not less than six-hundred seventy five thousand dollars (\$675,000) per annum paid in approximately equal installments at intervals based on any reasonable Company policy ("Post-Term Base Salary"). PPL agrees from time to time to consider increases in the Post-Term Base Salary in the discretion of the Board. Any increase in the Post-Term Base Salary, once granted, shall automatically amend this Agreement to provide that thereafter Executive's Post-Term Base Salary shall not be less than the annual amount of the increased Post-Term Base Salary.

(b) Equity Compensation: Stock Option.

(i) In consideration of Executive's voluntary reduction of his salary, the Company hereby grants to Executive a stock option award to purchase shares of the Company's common stock (the "Option") in accordance with the notice of grant and award agreement (the "Option Agreement") attached hereto. As set forth in the Option Agreement, the number of shares underlying the Option shall equal two million three hundred (2,300,000) shares of the Company's common stock with an exercise price of three dollars (\$3) per share. The Option will vest and be exercisable in thirty-five (35) equal monthly installments of sixty-three thousand eight hundred eighty eight (63,888) shares and one monthly installment of sixty-three thousand nine hundred twenty (63,920) shares, on the 1st day of each month, commencing on March 1, 2018, and subject to Executive's continued employment with the Company. The Option shall be subject to accelerated vesting as set forth in this Agreement and the Option Agreement. The Option shall be exercisable for a five (5) - year term commencing on the Effective Date. The Option will be subject to the terms, definitions, and provisions of the Company's 2018 Stock Incentive Plan and the Option Agreement.

(ii) The Option shall terminate and be cancelled in the event Approval is not attained as set forth in Section 1(b) above. The Option may not be exercised unless and until such Approval is attained.

(iii) The income received pursuant to the Option shall be subject to applicable tax withholding (including federal, state, and local taxes, as applicable), and other deductions as required by law or authorized by Executive.

(iv) The Company intends that the Option will be exempt from or comply with the requirements of Section 409A of the Code.

(c) During the term hereof, Executive shall participate in all health, retirement, Company-paid insurance, sick leave, disability, expense reimbursement and other benefit programs which PPL makes available to any of its senior executives.

(d) Executive shall be eligible to participate in and earn an annual bonus pursuant to the terms of the Company's bonus plans in effect during the term of his employment. Executive also shall be eligible to participate in any PPL incentive stock, option or bonus plan offered by PPL to its senior executives, subject to the terms thereof and at the sole discretion of the Board.

(e) Executive shall be entitled to a minimum of four (4) weeks paid vacation per year, or such greater amount as approved by the Compensation Committee of the Board (the "Compensation Committee") or, if there is no Compensation Committee, the Board, provided that not more than two (2) weeks of such vacation time may be taken consecutively without prior notice to and non-objection by the Compensation Committee or, if there is no Compensation Committee, the Board.

5. Certain Terms Defined. For purposes of this Agreement:

(a) Executive shall be deemed to be “disabled” if both of the following conditions have been satisfied: (i) a physical or mental condition shall occur and persist which, in the written opinion of a licensed and qualified physician selected by the Board in good faith, has rendered Executive unable to perform the duties set forth in Section 1 hereof for a period of seventy-five (75) consecutive days or more, or for sixty (60) days or more out of any (90) day period, and, (ii) in the written opinion of such physician, the condition will continue for an indefinite and long-term period of time, rendering Executive unable to return to his duties.

(b) A termination of Executive’s employment by PPL shall be deemed for “Cause” if, and only if, it is based upon (i) conviction of a felony; or (ii) material disloyalty to the Company such as embezzlement, misappropriation of corporate assets; or (iii) breach of Executive’s agreement not to engage during the term of this Agreement in business for another enterprise of the type engaged in by the Company, except as permitted pursuant to Section 3 of this Agreement; or (iv) the engaging in unethical or illegal behavior which is of a public nature, brings PPL into disrepute, and results in material damage to the Company; or (v) a material breach of this Agreement which causes material and demonstrable harm to the Company.

Cause shall not exist to terminate the Executive’s employment unless the Company gives Executive written notice within thirty (30) days after the discovery of the occurrence of the event which the Company believes constitutes the basis for Cause, specifying in detail the particular act or failure to act which the Company believes constitutes the basis for Cause. If the Executive fails to cure such act or failure to act within sixty (60) days after receipt of such notice, the Company may terminate Executive’s employment for Cause. For the avoidance of doubt, if such act is not curable, the Company may terminate Executive’s employment for Cause upon providing written notice of termination specifying the reasons therefore.

(c) A resignation by Executive of his employment shall not be deemed to be voluntary and shall be deemed to be a resignation with “Good Reason” if it is based upon (i) a diminution in Executive’s title, duties, responsibilities, privileges or Term Base Salary; or (ii) a direction by PPL that Executive report to any person or group other than the Board; or (iii) a geographic relocation of Executive’s place of work a distance of more than ten miles (10) from the Company’s offices as of the Effective Date in Doylestown, PA (unless such relocation results in PPL’s offices being forty (40) miles or less from Executive’s primary residence as of the date when the relocation occurs); or (iv) a direction by PPL that Executive shall not be permitted to perform his services from such location or locations as Executive reasonably determines are appropriate; or (v) the material breach of this agreement by PPL.

Good Reason shall not exist unless the Executive gives the Company written notice within thirty (30) days after the discovery of the occurrence of the event which the Executive believes constitutes the basis for Good Reason, specifying the particular act or failure to act which the Executive believes constitutes the basis for Good Reason. If the Company fails to cure such act or failure to act within thirty (30) days after receipt of such notice, the Executive may terminate his employment for Good Reason. However, such termination must occur within two (2) years following the initial existence of the condition specified in Section 5(c) which constitutes the basis for Good Reason.

(d) "Affiliate" means with respect to any Person, a Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control, with the Person specified.

(e) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act.

(f) A "Change in Control" means the occurrence of any of the following events:

(i) A change in the ownership of the Company that occurs on the date that any one Person, or more than one Person acting as a group (for purposes of SEC Rule 13d), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company. For purposes of this agreement, no Change of Control shall have occurred in the event Executive or a group which includes Executive acquires more than fifty percent (50%) of the voting control of the Company. The acquisition of additional stock by any one Person, who is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered an additional Change of Control; or

(ii) A change in the effective control of the Company that occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by one of either the Executive or a majority of the members of the Board prior to the date of the appointment or election;

(iii) A change in the ownership of a "substantial portion of the Company's assets", as defined herein. For this purpose, a "substantial portion of the Company's assets" shall mean assets of the Company having a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such change in ownership. For purposes of this subsection (iii), a change in ownership of a substantial portion of the Company's assets occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that constitute a "substantial portion of the Company's assets." For purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.



For purposes of this definition, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change of control event within the meaning of Section 409A.

Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if its primary purpose is to: (1) change the state of the Company's incorporation, or (2) create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(g) "Code" means the Internal Revenue Code of 1986, as amended.

(h) "Exchange Act" means the Exchange Act of 1934, as amended.

(i) "Person" means any individual, corporation, partnership, limited liability company, trust, association or other entity.

(j) "Related Person" means any immediate family member (spouse, partner, parent, sibling or child whether by birth or adoption) of the Executive and any trust, estate or foundation, the beneficiary of which is the Executive and/or an immediate family member of the Executive.

6. Certain Benefits Upon Termination. Executive's employment shall be terminated upon the earlier of (i) the voluntary resignation of Executive with or without Good Reason; or (ii) Executive's death or permanent disability; or (iii) upon the termination of Executive's employment by PPL for any reason at any time. In the event of any termination of employment, Executive shall be entitled to receive all accrued and unpaid salary, expense reimbursements, Option vesting, and benefits through the effective date of termination.

(a) Certain Terminations. If Executive's employment by PPL terminates for any reason other than as a result of (i) a termination for Cause, or (ii) a voluntary resignation by Executive without a Good Reason ((i) and (ii) collectively, an "Ineligible Termination"), then Executive also shall receive benefits and payments upon said termination of employment as described in Appendix A attached hereto.

(b) If Executive's employment by PPL terminates for any reason, other than an Ineligible Termination, Executive and his then covered dependents shall remain eligible to participate in all Company provided medical and dental plans to the extent Executive elects and remains eligible for coverage under COBRA and for a maximum period of eighteen (18) months at the Company's sole expense.

(c) In the event that Executive's employment terminates by reason of his death, all benefits provided in this Section 6 shall be paid to his estate or as his executor shall direct, but payment may be deferred until Executive's executor or personal representative has been appointed and qualified pursuant to the laws in effect in Executive's jurisdiction of residence at the time of his death.

(d) PPL shall have no liability to Executive under subsections 6(a), (b), or (c) if Executive's employment pursuant to this Agreement terminates due to an Ineligible Termination.

(e) To the extent that any or all of the payments and benefits provided for in this Agreement constitute "parachute payments" within the meaning of Section 280G of the Code and, but for this paragraph, would be subject to the excise tax imposed by Section 4999 of the Code, then, either: (i) Executive shall receive all such payments and benefits Executive is entitled to receive hereunder, and any liability for taxes pursuant to any payments included herein shall be Executive's liability alone; or (ii) the aggregate amount of such payments and benefits shall be reduced such that the present value thereof (as determined under the Code and applicable regulations) is equal to 2.99 times Executive's "base amount" (as defined in Section 280G of the Code), whichever of (i) and (ii) yields the greatest after-tax amount to Executive. The determination of any reduction or increase of any payment or benefits under this paragraph pursuant to the foregoing provision shall be made by a nationally recognized public accounting firm chosen by the Company in good faith, and such determination shall be conclusive and binding on the Company and Executive. If a reduction in payments is required by the foregoing provisions of this Section 6(h), the reduction shall occur in the following order: (i) first, any future cash payments (if any) shall be reduced (if necessary, to zero); (ii) second, any current cash payments shall be reduced (if necessary, to zero); (iii) third, all non-cash payments (other than equity or equity derivative related payments) shall be reduced (if necessary, to zero); and (iv) fourth, all equity or equity derivative payments shall be reduced, except if, and only if, a different order of reduction is required to avoid the imposition of an additional tax under Section 409A of the Code. As expressly permitted by Q/A-32 of the final regulations under Section 280G of the Code, with respect to performing any present value calculations that are required in connection with the foregoing calculations, the parties affirmatively elect to utilize the Applicable Federal Rates that are in effect as of the date of this letter, and the accounting firm shall therefore use such Applicable Federal Rates in its determinations and calculations.

7. Clawback Provision. In the event that all of the following conditions are satisfied:

(a) A mandatory restatement of the Company's financial results occurs and is released to the public at a time when the Company's securities are traded on any United States securities exchange (a "Restatement"); and

(b) The Restatement is attributable to misconduct or wrongdoing by the Executive; and

(c) Executive has received payment of a cash bonus or has been issued any shares of PPL as a bonus within three (3) years preceding the date of the issuance and release to the public of such restatement; and

(d) The amount of such cash bonus or share grant has been calculated and awarded pursuant to a specific financial formula; and

(e) Such bonus or share grant would have been diminished based on the restated financial results had the financial formula pursuant to which the bonus or share grant has been calculated (the "Formula") been applied to the restated financial results (the amount of such diminution, is the "Clawback Amount");

then, upon written demand from the Company setting forth in detail the basis for such demand, the Executive shall remit to the Company the Clawback Amount less the amount of any taxes paid or payable by Executive in respect of such bonus or share grant. Provided, however, that if and to the extent that (x) the Restatement results in the Company increasing expenses or reducing income, revenues or another component of the Formula during the measurement period during which the applicable bonus or share grant was calculated, but also results in (y) the Company increasing or shifting such income, revenues or expenses into a different fiscal period, such that the net effect of the Restatement is effectively neutral to the Company over the applicable time periods, then no Clawback Amount shall be due from the Executive.

8. Indemnification. PPL shall indemnify, defend and hold Executive harmless from and against all claims, losses, damages, expense or liabilities, including expenses of defense and settlement, and advancement of defense costs as such costs are incurred, (collectively, "Indemnified Losses") to the fullest extent allowable by law and as provided in any of the PPL by-laws, charter, any indemnification agreement with the Executive, or as otherwise agreed between the parties and under any applicable laws, where such claims or Indemnified Losses are based upon or in any way arise from or are connected with his employment by PPL or his service as an officer or director of PPL or any PPL Affiliate. To the fullest extent permitted by law, PPL shall advance to or on behalf of Executive all expenses incurred in connection with the defense of any indemnified action or claim pursuant to this Section 8. PPL shall investigate in good faith the availability and cost of directors' and officers' insurance and shall include Executive as an insured in any directors' and officers' insurance policy it maintains. The provisions of this Section 8 shall survive any termination or expiration of this Agreement. Executive shall have the right to elect either (a) to arbitrate in accordance with Section 13 of this Agreement any claim by Executive to enforce the provisions of Section 8 of this Agreement, or (b) to litigate any such claim in any court of competent jurisdiction.

9. Attorney Fees. In the event that any action or proceeding is brought to enforce the terms and provisions of this Agreement, each party shall bear its own attorney's fees, *except that* the Company shall bear all attorney's fees and litigation costs incurred by Executive in successfully enforcing the provisions of this Agreement or in successfully defending any claim brought by the Company against the Executive arising pursuant to this Agreement.

10. Notices. All notices and other communications provided to either party hereto under this Agreement shall be in writing and delivered by hand, or by certified or registered mail to such party at its/his address set forth below its/his signature hereto, or at such other address as may be designated with postage prepaid, shall be deemed given when received.

11. Construction. In constructing this Agreement, if any portion of this Agreement shall be found to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be given effect to the maximum extent permitted without considering the void, invalid or unenforceable provisions. In construing this Agreement, the singular shall include the plural, the masculine shall include the feminine and neuter genders as appropriate, and no meaning in effect shall be given to the captions of the sections in this Agreement, which is inserted for convenience of reference only. Without limitation to the foregoing, nothing in this Agreement is intended to violate the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the rules and regulations of the Securities and Exchange Commission or the applicable listing standards of NASDAQ or the NYSE, and to the extent that any provision of this Agreement would constitute such a violation, such provision shall be modified to the extent required by such Act, rule, regulation or standard, or, to the extent that such provision cannot be so modified and is found to be invalid or unenforceable, the remaining terms and provisions shall be given effect to the maximum extent permitted without considering the void, invalid or unenforceable provision.

This Agreement is intended to comply with the requirements of Section 409A of the Code, including the exceptions thereto, and shall be construed and administered in accordance with such intent. For purposes of Section 409A of the Code, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement in connection with a termination of employment shall only be made if such termination of employment constitutes a "separation from service" under Section 409A of the Code.

Notwithstanding any other provision of the Agreement, to the extent that (i) any amount paid pursuant to the Agreement is treated as nonqualified deferred compensation pursuant to Section 409A of the Code and is provided to the Executive on account of his separation from service and (ii) the Executive is a "specified employee" pursuant to Section 409A(2)(B) of the Code, then such payments shall be made on the date which is six (6) months after the date of the Executive's separation from service. In connection with the payment of any obligation that is delayed pursuant to this section, the Company shall establish an irrevocable trust to hold funds to be used for payment of such obligations. Upon the date that such amount would otherwise be payable, the Company shall deposit into such irrevocable trust an amount equal to the obligation. However, notwithstanding the establishment of the irrevocable trust, the Company's obligations under the Agreement upon the Executive's termination of employment shall constitute a general, unsecured obligation of the Company and any amount payable to the Executive shall be paid solely out of the Company's general assets, and the Executive shall have no right to any specific assets of the Company. The funds, if any, contained or contributed to the irrevocable trust shall remain available for the claims of the Company's general creditors.

12. Headings. The section headings hereof have been inserted for convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

13. Governing Law. The provisions of this Agreement shall be construed and interpreted in accordance with the internal laws of the State of Pennsylvania as at the time in effect and without regard to conflict of laws provisions, *except that* the provisions of Section 8 of this Agreement shall be construed and interpreted in accordance with the laws of the state in which PPL is incorporated at the time that any claim under Section 8 is asserted. The parties agree that any dispute arising under this Agreement shall be determined by binding arbitration before the American Arbitration Association ("AAA") under the AAA's commercial arbitration rules. Such arbitration shall be conducted in New York, New York, before a single, impartial arbitrator selected by the AAA; provided, however, the parties may mutually agree after the commencement of a proceeding to hold the arbitration in another jurisdiction. In any such arbitration, the Company shall bear and shall be solely responsible for the costs and fees imposed by the AAA and the arbitrator. The parties agree to abide by all decisions and awards rendered in such proceedings. All decisions and awards rendered by the arbitrator shall be final, binding and conclusive. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, and the parties consent to the non-exclusive jurisdiction of the federal and state courts in New York and Pennsylvania for this purpose. If at the time any dispute or controversy arises with respect to this Agreement the AAA is no longer providing arbitration services, then JAMS shall be substituted for the AAA for purposes of this paragraph, and the arbitration will be conducted in accordance with the then-existing and applicable rules and procedures of JAMS.

14. Entire Agreement. Except as otherwise provided herein, this Agreement constitutes the entire agreement and supersedes all other prior employment agreements and undertakings, both written and oral, among Executive and the Company, with respect to the subject matter hereof, except that the separate Indemnification Agreement dated August 19, 2009 between the parties shall survive the execution of this Agreement. This Agreement may not be modified or amended except in writing, manually signed in pen and ink by each of the parties hereto.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, this Agreement shall be effective as of the date specified in the first paragraph of this Agreement.

ProPhase Labs, Inc., a Delaware corporation  
Address:

By: /s/ Monica Brady  
Monica Brady, Chief Accounting Officer

Executive:

/s/ Ted Karkus  
Ted Karkus  
Address:

**APPENDIX A**  
**Certain Benefits Upon Termination**

**I. For the time period from the Effective Date until February 22, 2021, Executive shall be eligible to receive the following benefits and cash payments upon a Termination of Employment other than an Ineligible Termination:**

A. Executive shall receive a combination of accelerated vesting of the outstanding and unvested stock options granted to him under Section 4(b) of the Agreement and a cash severance payment as set forth in the chart below:

Month in which Executive's employment is terminated other than an Ineligible Termination	Ratio of Option subject to acceleration of vesting	Cash severance payment (based upon a total potential cash severance payment of \$1,687,500)
February 2018	1	\$ 0
March 2018	35/36	\$ 46,875
April 2018	34/36	\$ 93,750
May 2018	33/36	\$ 140,625
June 2018	32/36	\$ 187,500
July 2018	31/36	\$ 234,375
August 2018	30/36	\$ 281,250
September 2018	29/36	\$ 328,125
October 2018	28/36	\$ 375,000
November 2018	27/36	\$ 421,875
December 2018	26/36	\$ 468,750
January 2019	25/36	\$ 515,625
February 2019	24/36	\$ 562,500
March 2019	23/36	\$ 609,375
April 2019	22/36	\$ 656,250
May 2019	21/36	\$ 703,125
June 2019	20/36	\$ 750,000
July 2019	19/36	\$ 796,875
August 2019	18/36	\$ 843,750
September 2019	17/36	\$ 890,625
October 2019	16/36	\$ 937,500
November 2019	15/36	\$ 984,375
December 2019	14/36	\$ 1,031,250
January 2020	13/36	\$ 1,078,125
February 2020	12/36	\$ 1,125,000
March 2020	11/36	\$ 1,171,875
April 2020	10/36	\$ 1,218,750
May 2020	9/36	\$ 1,265,625
June 2020	8/36	\$ 1,312,500
July 2020	7/36	\$ 1,359,375
August 2020	6/36	\$ 1,406,250
September 2020	5/36	\$ 1,453,125
October 2020	4/36	\$ 1,500,000
November 2020	3/36	\$ 1,546,875
December 2020	2/36	\$ 1,593,750
January 2021 – February 22, 2021	1/36	\$ 1,640,625

**II. On or after February 23, 2021, Executive shall be eligible to receive the following benefits and cash payments upon a Termination of Employment other than an Ineligible Termination:**

1. Certain Benefits Upon Termination. Executive's employment shall be terminated upon the earlier of (i) the voluntary resignation of Executive with or without Good Reason; or (ii) Executive's death or permanent disability; or (iii) upon the termination of Executive's employment by PPL for any reason at any time. In the event of any termination of employment, Executive shall be entitled to receive all accrued and unpaid salary, expense reimbursements, and benefits through the effective date of termination. In addition, the following provisions of this Section also shall apply:

(a) Certain Terminations. If Executive's employment by PPL terminates for any reason other than as a result of (y) a termination for Cause, or (z) a voluntary resignation by Executive without a Good Reason ((y) and (z) collectively, an "Ineligible Termination"), then Executive also shall receive:

(i) a cash severance payment equal to two and one-half (2.5) times his Base Salary *i.e.*, two hundred fifty percent (250%) of his Post-Term Base Salary). Such cash severance payment shall be paid as follows: (x) one-half (.5) of the cash severance payment shall be paid in a lump sum within five (5) business days following the effective date of the termination; and (y) the remaining one-half of the cash severance payment shall be paid in twelve (12) equal, consecutive, monthly installments commencing on the first business day of the month following the effective date of the termination; and

(ii) all of Executive's stock options and/or restricted stock shall automatically vest concurrently upon such termination of employment, regardless of any prior existing vesting schedules;



(iii) Provided, however, that if his employment terminates by reason of his death or disability, then such cash payments shall be paid only to the extent of the proceeds payable to the Company through a "key man" life, disability or similar insurance relating to the death or disability of Executive.

(b) Additional Payment if Termination Occurs in Connection with a Change in Control. In the event that Employee has received the payments described in Section II.1(a), and it is determined that the provisions of Section II.1(c) also are applicable (termination in connection with a Change in Control), then Employee shall be entitled to receive an additional payment equal to the amounts due to Employee pursuant to Section II.1(c), less the amount of payments previously received by Employee pursuant to Section II.1(a).

(c) Payment if Termination Occurs in Connection with a Change in Control. Notwithstanding the provisions of Section II.1(a) above, in the event Executive's employment terminates due to a reason other than an Ineligible Termination, death or disability, and if such termination occurs within (a) eighteen (18) months following a Change in Control, or (b) prior to a Change in Control but in contemplation of a Change in Control which Change in Control actually occurs, then, in lieu of the severance payment described in Section II.1(a) above, Executive shall instead receive a one-time severance payment in cash equal to two million five hundred thousand dollars (\$2,500,000). In addition, in such event, all of Executive's stock options and/or restricted stock shall automatically vest concurrently upon such termination of employment, regardless of any prior existing vesting schedule.

(i) For purposes of this Section II.1(c), the involuntary termination of Executive's employment within one hundred eighty (180) days preceding a Change of Control (due to a reason other than an Ineligible Termination, death or disability) will be deemed to have been a termination of employment in contemplation of a Change in Control.

(ii) In determining whether a termination of Executive's employment occurring more than one hundred eighty (180) days preceding a Change of Control (due to a reason other than an Ineligible Termination, death or disability) constitutes a termination of employment in contemplation of a Change in Control, the court or other tribunal making such determination shall consider the totality of facts and circumstances surrounding such termination of employment.

**Schedule A**  
**Form of Employment Release**

**SEPARATION AGREEMENT AND GENERAL RELEASE**

This SEPARATION AGREEMENT AND GENERAL RELEASE ("Agreement") is made and entered into by and among ProPhase Labs, Inc. (the "Company") and [INSERT EMPLOYEE NAME] ("Employee"). The Company and Employee shall be referred to as the "Parties" or, each separately, a "Party."

WHEREAS, Employee and the Company have agreed that Employee shall permanently separate from employment with the Company effective on \_\_\_\_\_, 20\_\_; and

WHEREAS, Employee and the Company wish to agree on matters relating to the end of Employee's employment with the Company on the terms included in this Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is acknowledged, and fully intending to be legally bound, Employee and the Company AGREE as follows:

1. **Separation Date.** Employee's employment with the Company shall terminate at the close of business on \_\_\_\_\_, 20\_\_ ("Separation Date"). To the extent he has not already, Employee shall receive his regular pre-separation compensation and benefits through the Separation Date, consistent with Company policy. Employee confirms that he shall relinquish all titles and positions with the Company

2. **Separation Benefits.** If Employee signs, complies with, and does not revoke this Agreement, the Company shall provide the following compensation and benefits to Employee. Employee acknowledges and agrees that such compensation and benefits constitute valid consideration for this Agreement and that he would not be entitled to such compensation and benefits but for his execution (and non-revocation) of this Agreement.

a. **Severance Payment.** The Company shall pay Employee the severance payments and other severance benefits (collectively, the "Benefits") set forth in his Employment Agreement dated as of January \_ 2018 (the "Employment Agreement"). The Employee shall not receive the first cash payment until the first regular payroll date that falls at least ten (10) business days after the Effective Date (as defined below).

b. **Accrued Vacation.** The Company shall pay Employee \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as payment for his [INSERT NUMBER] weeks of accrued, unused vacation days, such payment being based on Employee's base salary as of the Separation Date, less all tax withholdings and other applicable deductions, which shall be paid to Employee in a single lump-sum payment. The Employee shall not receive payment until the first regular payroll date that falls at least ten (10) business days after the Effective Date (as defined below).

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c. **Other Benefits.** For the avoidance of doubt, this will confirm that Employee shall receive all of the severance payments and other post-employment benefits set forth in his \_\_\_\_\_ and has not waived \_\_\_\_\_

3. **Consideration.** Employee acknowledges: (i) the sufficiency of the consideration included in Section 2 above for the release of Employee's claims; (ii) that the Company is not, in the absence of this Agreement, otherwise required to make any such payment to Employee; (iii) that such payment is being made to Employee because of his agreement to fulfill the promises and to provide the releases stated in this Agreement; and (iv) that such payment is in excess of any payment or benefit, to which Employee might otherwise be entitled.

4. **Taxes.** Employee is responsible for paying any taxes on amounts he receives because he signed this Agreement. As to payments made pursuant to this Agreement, Employee is responsible for determining and paying any required taxes. Employee agrees to indemnify the Company and Released Parties (as defined below) for all expenses, penalties, or interest charges it incurs as a result of not paying payroll taxes on, or withholding taxes from, amounts paid under this Agreement. Employee further agrees not to make any claims against the Company or any other Released Party or other person based on how the Company or Released Parties report amounts paid under this Agreement. In addition, Employee understands and agrees that the Released Parties have no duty to try to prevent such an adverse determination.

5. **Benefits.** Except as stated in this Agreement, the Employment Agreement, or otherwise required by law, all medical and health benefits from the Company ceased as of Employee's Separation Date.

**6. Release by Employee and Acknowledgement by Company.** In consideration of the compensation and benefits provided in this Agreement and intending to be legally bound, Employee, for himself, his heirs, executors, administrators, successors, assigns, and legal and personal representatives, unconditionally and irrevocably releases and forever discharges the Company, each of the Company's current and former employees, agents, officers, directors, shareholders, members, managers, partners, and attorneys (collectively, the "Released Parties") from any and all claims, causes of action, liabilities, obligations, controversies, damages, lawsuits, debts, demands, costs, charges and/or expenses (including attorneys' fees and costs) arising solely out of Employee's employment relationship with the Company or the termination of that relationship of any nature whatsoever, asserted or unasserted, known or unknown, suspected or unsuspected, that Employee ever had, now has or hereafter may have against the Company and/or any of the other Released Parties that arose at any time regarding any matter up to and including the date of this Agreement (together, the "Claims"). Without in any way limiting the generality of the foregoing, Employee specifically acknowledges and agrees that the Claims released include all claims based on events occurring up to the date of Employee's execution of this Agreement under any federal, state or local statute, ordinance, or regulation, governing solely his employment with the Company including, including but not limited to, the Civil Rights Acts of 1866 and 1867, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the National Labor Relations Act, Workers' Compensation law, the Rehabilitation Act, the Equal Pay Act, the Age Discrimination in Employment Act ("ADEA"), as amended by the Older Workers Benefit Protection Act ("OWBPA"), any claims under the Pennsylvania Human Relations Act (PHRA), the Pennsylvania Wage Payment and Collection Law (WPCL), the Pennsylvania Minimum Wage Act (PMWA), or under any common law, such as claims for wrongful discharge, constructive discharge, defamation, unjust enrichment, breach of contract, or negligent or intentional infliction of emotional distress. Employee does not release the Company from any claims that may arise (i) as a result of any failure by the Company to comply with this Agreement or (ii) after the date of Employee's execution of this Agreement.

**Nothing in this Agreement shall affect, terminate or discharge Employee's rights to indemnification and advancement of expenses pursuant to the Employment Agreement, the August 19, 2009 Indemnity Agreement, the Company's by-laws, and applicable laws.**

**7. No Other Claims or Proceedings by Employee.** Employee warrants, covenants, and represents that he has not assigned or transferred or purported to assign or transfer to any person any of the Claims. Employee also warrants, covenants, and represents that, as of the date of this Agreement, neither he nor anyone acting on his behalf has made or filed any lawsuit, complaint, charge, action or proceeding against any of the Company Released Parties with any federal, state, or local court agency or authority, or any other regulatory authority.

**8. Unemployment Benefits.** Should Employee apply for unemployment benefits following the Separation Date, the Company will not actively seek to contest Employee's application.

**9. Return of Documents and Things.** On or before the Separation Date, Employee shall return to the Company, all electronic and hard copy data, documents, and other materials, equipment and other property of the Company and the other Released Parties in his possession or under his control. Such property includes, but is not limited to, any and all (1) company car; (2) cell phone, computers, computer tablets, computer-related devices, computer storage media and other portable media, personal digital assistants (PDAs), and other equipment; (3) hard copy and electronic documents, records, data, files, memoranda, reports, drawings, and plans. and (4) keys and credit cards, in all cases that were provided by the Company or any other Company Released Parties that relate to the Company or the other Company Released Parties, or that Employee has used, prepared or come into contact with during the course of his employment with the Company.

10. **Full Compensation.** Employee acknowledges that, other than (i) as stated in Section 2 of this Agreement, and (ii) as set forth in his Employment Agreement, he has received payment in full of all of the compensation, benefits and/or payments due to him from the Company by virtue of his status as an employee through the Separation Date, including all wages, bonuses, equity, expense reimbursements, payments to benefit plans and any other payment under a compensation plan, compensation program, compensation practice or compensation promise of the Company. Employee further acknowledges that he shall not be entitled to any post-separation compensation or benefits by virtue of his status as an employee, including any severance or separation payments, except as specifically stated in this Agreement and in his Employment Agreement. **[\*\* Note: Before signing this Agreement, parties need to confirm that all salary and reimbursements that were due to Employee for periods prior to Separation Date were paid in full.]**

11. **Non-Disparagement.** Neither the Company, nor Employee shall disparage to any third party the professional or personal reputation or character of the other. This Non-Disparagement provision applies to comments made verbally, in writing, electronically or by any other means, including, but not limited to blogs, postings, message boards, texts, video or audio files and all other forms of communication.

12. **References.** The Company agrees to provide neutral references upon request, which is to only provide dates of employment, position(s) held and employment status.

13. **Non-Admission.** Employee agrees that the payments made and other consideration received pursuant to this Agreement are not to be construed as an admission of legal liability by the Company and that no person or entity shall utilize this Agreement or the consideration received pursuant to this Agreement as evidence of any admission of liability or obligation.

14. **Knowing and Voluntary Waiver.** Employee acknowledges that he has carefully reviewed this Agreement with the benefit of counsel and that he enters into such documents knowingly and voluntarily. Employee understands and acknowledges that, under this Agreement, he is receiving compensation and benefits in addition to anything to which Employee is already entitled and that, by this Section, the Company has hereby advised Employee in writing to consult with an attorney of his choosing prior to executing this Agreement, which he has done. Employee acknowledges that neither the Company nor any of its employees, representatives or attorneys have made any representations or promises concerning the terms or effects of this Agreement other than those contained in this Agreement.

15. **Notices.** All notices shall be in writing and shall be sufficiently given if hand-delivered, sent by documented overnight delivery service or registered or certified mail, postage prepaid, return receipt requested, or by telegram or telecopy (confirmed by U.S. mail), receipt acknowledged, addressed below. Any such notice shall be deemed to have been given as of the date received, in the case of personal delivery, or on the date shown on the receipt or confirmation, in all other cases. Any and all notice as provided for in this Agreement may be given as follows:

- a. If to the Company:  
[INSERT NAME/ADDRESS]
- b. If to Employee:  
[INSERT NAME/ADDRESS]

16. **Consideration Period; Right to Revoke Agreement; Effective Date.** Employee acknowledges that he has been given a period of 21 days within which to consider the Agreement (although he need not take all 21 days if he does not wish to do so), and the Parties agree that any changes to this Agreement, whether material or immaterial, have not re-started the running of this period. Employee may revoke or cancel this Agreement within seven days after his execution of it by notifying the Company of his desire to do so in writing delivered to [INSERT NAME] at the Company. To be effective, notice must be given in the manner specified in this Agreement before the close of business on the seventh day following Employee's execution of this Agreement. Employee understands and agrees that he shall not be entitled to any payments or benefits under this Agreement if he revokes this Agreement. This Agreement shall be effective on the eighth day after Employee's execution of it, assuming that he has not first validly revoked the Agreement (the "Effective Date").

17. **Interpretation and Governing Law.** This Agreement shall be construed as a whole according to their fair meaning. It shall not be construed strictly for or against Employee or the Company. This Agreement shall be governed by the statutes and common law of the Commonwealth of Pennsylvania. The Parties irrevocably submit to the exclusive jurisdiction and venue of the United States federal courts or the courts of the Commonwealth of Pennsylvania in any action or proceeding brought with respect to or in connection with this Agreement. Each Party waives any objection based on forum non conveniens and waives any objection to venue of any action instituted hereunder in such courts.

18. **Enforceability and Waiver.** If any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction by reason of the nature of the covenants contained in this Agreement, such terms shall be deemed changed or reduced to enforceable terms, but only to the extent necessary to cure such invalidity. Further, whenever possible, each provision of this Agreement shall be interpreted in such a manner to be effective and valid under applicable law. No waiver by either Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by either Party of any right under this Agreement shall be construed as a waiver of any other right.

19. **Headings/Counterparts.** The headings of the sections in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any of the provisions of this Agreement. This Agreement may be executed in two or more counterparts.

20. **Entire Agreement.** This Agreement constitutes the entire agreement between Employee and the Company. Amendments to this Agreement shall not be effective unless they are in writing signed by Employee and a duly authorized representative of the Company.

**BY SIGNING THIS AGREEMENT, [INSERT EMPLOYEE NAME] ACKNOWLEDGES THAT HE DOES SO VOLUNTARILY AFTER CAREFULLY READING AND FULLY UNDERSTANDING EACH PROVISION AND ALL OF THE EFFECTS OF THIS AGREEMENT AND THE MUTUAL RELEASE, WHICH INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS AND RESTRICTS FUTURE LEGAL ACTION AGAINST [INSERT COMPANY NAME] AND OTHER RELEASED PARTIES AS PROVIDED IN THIS AGREEMENT.**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement on thisday of \_\_\_\_\_, 2015.

[INSERT EMPLOYEE NAME]

[INSERT COMPANY NAME]

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Date: \_\_\_\_\_





**PROPHASE LABS, INC.**  
**NOTICE OF GRANT OF STOCK OPTION**

The Participant has been granted an option (the "**Option**") to purchase certain Stock of ProPhase Labs, Inc. (the "**Company**") pursuant to ProPhase Labs, Inc. 2018 Stock Incentive Plan (the "**Plan**"), as set forth below. The Option will be null and void if the Amended and Restated 2015 Executive Employment Agreement effective February 23, 2018 between the Company and Participant ("**2015 Employment Agreement**") is not approved by a majority of the shares voted to approve the 2015 Employment Agreement (excluding the shares voted by Executive) at a meeting of stockholders of the Company to be held no later than September 30, 2018 (the "**Approval**").

**Participant:** Ted Karkus

**Grant Date:** February 23, 2018

**Number of Option Stock:** 2,300,000

**Exercise Price:** \$3.00

**Initial Vesting Date:** March 1, 2018

**Option Expiration Date:** February 22, 2023

**Tax Status of Option:** Nonstatutory Stock Option

**Vested Stock:** Except as provided in the Award Agreement and subject to Participant's continuous Service, the number of Vested Stock (disregarding any resulting fractional share) as of any date is determined based upon the following schedule:

	<b>Number of Vested Stock</b>
On the 1 <sup>st</sup> day of each month beginning on the Initial Vesting Date and continuing for the following 35 months	63,888 shares
<u>Plus</u>	
On the 1st day the 36 <sup>th</sup> month following the Initial Vesting Date, an additional	63,920 shares

Capitalized terms not defined herein shall have the meaning as set forth in the Plan.

If Participant's Service terminates for any reason other than as a result of (i) a termination by the Company not for Cause, (ii) resignation by Executive with Good Reason, or (iii) due to Participant's death or Disability, any portion of the Option that is not vested and exercisable as of such date of termination of Service shall automatically expire in accordance with the Award Agreement. The terms "Cause" and "Good Reason" are defined in the 2015 Employment Agreement.

If Participant's Service terminates as a result of (i) a termination by the Company not for Cause or (ii) resignation by Participant with Good Reason, all of Participant's outstanding and unvested Option shall automatically vest and become exercisable concurrently upon such termination of Service, regardless of any prior existing vesting schedules.

If Participant's Service terminates due to his death or Disability, vesting of the Option for three (3) additional months following the termination of Service shall be accelerated concurrently upon such termination of Service.

The vested portion of the Option upon a termination of Service for any reason shall remain exercisable up to the Option Expiration Date.

The Exercise Price represents an amount the Company believes to be no less than the Fair Market Value of a share of Stock as of the Grant Date, determined in good faith in compliance with the requirements of Section 409A of the Code. However, there is no guarantee that the Internal Revenue Service will agree with the Company's determination. A subsequent IRS determination that the Exercise Price is less than such fair market value could result in adverse tax consequences to the Participant. By signing below, the Participant agrees that the Company, its Directors, Officers and stockholders shall not be held liable for any tax, penalty, interest or cost incurred by the Participant as a result of such determination by the IRS. The Participant is urged to consult with his or her own tax advisor regarding the tax consequences of the Option, including the application of Section 409A.

In the event of any conflict or inconsistency between the terms set forth in (i) this Notice of Grant of Stock Option, the Plan, and the Award Agreement and (ii) the 2018 Executive Employment Agreement between Company and Participant, as amended, or any subsequent consulting or service agreement between Company and Participant (collectively referred to as "Participant's Service Agreement"), the terms and provisions of Participant's Service Agreement, as may be amended from time to time, shall prevail and be given priority.

The Participant acknowledges receipt of copies of this Notice of Grant of Stock Option, the Plan, and the Award Agreement, represents that the Participant has read and is familiar with their provisions, and hereby accepts the Option subject to all of the terms and conditions therein.

PROPHASE LABS, INC.

TED KARKUS

By: /s/ Monica Brady

/s/ Ted Karkus

Name: Monica Brady

Signature

Title: Chief Accounting Officer

Date: 2/18/2018

Date: 2/19/2018

Address: ProPhase Labs, Inc.

Address:

621 N. Shady Retreat Road  
Doylestown, PA 18901

ATTACHMENTS: ProPhase Labs, Inc. 2018 Stock Incentive Plan, as amended to the Grant Date; Award Agreement and Exercise Notice

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**PROPHASE LABS, INC.**  
**AWARD AGREEMENT**

ProPhase Labs, Inc. has granted to the Participant named in the *Notice of Grant of Stock Option* (the "**Grant Notice**") to which this Award Agreement is attached an Option to purchase certain Stock upon the terms and conditions set forth in the Grant Notice and this Award Agreement. The Option has been granted pursuant to and shall in all respects be subject to the terms and conditions of ProPhase Labs, Inc. 2018 Stock Incentive Plan (the "**Plan**"), as amended to the Grant Date, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of, and represents that the Participant has read and is familiar with the terms and conditions of, the Grant Notice, this Award Agreement and the Plan, (b) accepts the Option subject to all of the terms and conditions of the Grant Notice, this Award Agreement and the Plan, and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Award Agreement or the Plan.

**1. Definitions and Construction.**

**1.1. Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

**1.2. Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Award Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

**2. Tax Status of Option.**

This Option is intended to be a Nonstatutory Stock Option and shall not be treated as an Incentive Stock Option within the meaning of Section 422(b) of the Code.

**3. Administration.**

All questions of interpretation concerning the Grant Notice, this Award Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Option shall be determined by the Committee. All such determinations by the Committee shall be final, binding and conclusive upon all persons having an interest in the Option, unless fraudulent or made in bad faith.

**4. Exercise of the Option.**

**4.1. Right to Exercise.** Except as otherwise provided herein, the Option shall be exercisable on and after the Initial Vesting Date and prior to the termination of the Option (as provided in Section 6) in an amount not to exceed the number of Vested Stock less the number of Stock previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more Stock than the Number of Option Stock, as adjusted pursuant to Section 4.3 of the Plan. The Option may not be exercised unless and until the Approval is obtained.

**4.2. Method of Exercise.** Exercise of the Option shall be by means of electronic or written notice (the "**Exercise Notice**") in a form authorized by the Company, which as of the Grant Date is the Stock Option Exercise Notice attached to this Award Agreement. An electronic Exercise Notice must be digitally signed or authenticated by the Participant in such manner as required by the notice and transmitted to the Company or an authorized representative of the Company (including a third-party administrator designated by the Company). In the event that the Participant is not authorized or is unable to provide an electronic Exercise Notice, the Option shall be exercised by a written Exercise Notice addressed to the Company, which shall be signed by the Participant and delivered in person, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by such other means as the Company may permit, to the Company, or an authorized representative of the Company (including a third-party administrator designated by the Company). Further, each Exercise Notice must be received by the Company prior to the termination of the Option as set forth in Section 6 and must be accompanied by full payment of the aggregate Exercise Price for the number of Stock being purchased. The Option shall be deemed to be exercised upon receipt by the Company of such electronic or written Exercise Notice and the aggregate Exercise Price.

**4.3. Beneficial Ownership of Stock; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with a broker of the Company's choosing any or all Stock acquired by the Participant pursuant to the exercise of the Option. Except as provided by the preceding sentence, a certificate for the Stock as to which the Option is exercised shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

**5. Termination of the Option.**

The vested portion of the Option shall terminate and may no longer be exercised after the close of business on the Option Expiration Date.

**6. Effect of Termination of Service – Option Exercisability.**

Except as set forth in the Grant Notice, the Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested up to the close of business on the Option Expiration Date.

**7. Miscellaneous Provisions.**

**7.1. Termination or Amendment.** The Committee may terminate or amend the Plan or the Option at any time; provided, however, that except as provided in Section 9 of the Plan in connection with a Change of Control, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Participant unless such termination or amendment is necessary to comply with any applicable law or government regulation, including, but not limited to Section 409A of the Code. No amendment or addition to this Award Agreement shall be effective unless in writing.

**7.2. Compliance with Section 409A.** The Company intends that income realized by the Participant pursuant to the Plan and this Award Agreement will not be subject to taxation under Section 409A of the Code. The provisions of the Plan and this Award Agreement shall be interpreted and construed in favor of satisfying any applicable requirements of Section 409A of the Code. The Company, in its reasonable discretion, may amend (including retroactively) the Plan and this Agreement in order to conform to the applicable requirements of Section 409A of the Code, including amendments to facilitate the Participant's ability to avoid taxation under Section 409A of the Code. However, the preceding provisions shall not be construed as a guarantee by the Company of any particular tax result for income realized by the Participant pursuant to the Plan or this Award Agreement. In any event, the Company shall be responsible for the payment of any applicable taxes on income realized by the Participant pursuant to the Plan or this Award Agreement.

**7.3. Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Award Agreement.

**7.4. Binding Effect.** Subject to the restrictions on transfer set forth herein, this Award Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**7.5. Electronic Delivery and Acceptance.** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

**7.6. No Rights as a Stockholder or Employee.** The Participant shall have no rights as a stockholder with respect to any Stock covered by the Option until the date of the issuance of the Stock for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the Stock are issued, except as provided under the Plan. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Award Agreement shall confer upon the Participant any right to continue in the Service of the Company or interfere in any way with any right of the Company to terminate the Participant's Service as a Director, an Employee or Consultant, as the case may be, at any time.

**7.7. Applicable Law.** This Award Agreement shall be governed by the laws of the State of Delaware as such laws are applied to agreements between Delaware residents entered into and to be performed entirely within the State of Delaware.

**7.8. Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Nonstatutory Stock Option

Participant: \_\_\_\_\_  
Date: \_\_\_\_\_

**STOCK OPTION EXERCISE NOTICE**

ProPhase Labs, Inc.

Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ladies and Gentlemen:

1. **Option.** I was granted an option (the "**Option**") to purchase Stock of ProPhase Labs, Inc. (the "**Company**") pursuant to the Company's 2018 Stock Incentive Plan (the "**Plan**"), my Notice of Grant of Stock Option (the "**Grant Notice**") and my Award Agreement as follows:

Grant Date: \_\_\_\_\_  
Number of Option Stock: \_\_\_\_\_  
Exercise Price per Share: \$ \_\_\_\_\_

2. **Exercise of Option.** I hereby elect to exercise the Option to purchase the following number of Stock, all of which are Vested Stock, in accordance with the Notice of Grant of Stock Option and the Award Agreement:

Total Stock Purchased:

Total Exercise Price (Total Stock X Price per Share) \$ \_\_\_\_\_

3. **Payments.** I enclose payment in full of the total exercise price for the Stock in the following form(s), as authorized by my Award Agreement:

Cash: \$ \_\_\_\_\_  
 Check: \$ \_\_\_\_\_  
 Tender of Company Stock: \_\_\_\_\_ Contact Plan Administrator

4. **Tax Withholding.** I authorize payroll withholding and otherwise will make adequate provision for the federal, state, local and foreign tax withholding obligations of the Company, if any, in connection with the Option. If I am exercising a Nonstatutory Stock Option, I enclose payment in full of my withholding taxes, if any, as follows:

**(Contact Plan Administrator for amount of tax due.)**

Cash: \$ \_\_\_\_\_  
 Check: \$ \_\_\_\_\_

5. **Participant Information.**

My address is: \_\_\_\_\_  
\_\_\_\_\_  
My Social Security Number is: \_\_\_\_\_

6. **Binding Effect.** I agree that the Stock is being acquired in accordance with and subject to the terms, provisions and conditions of the Notice of Grant of Stock Option, the Award Agreement to all of which I hereby expressly assent. This Agreement shall inure to the benefit of and be binding upon my heirs, executors, administrators, successors and assigns.

\_\_\_\_\_

I understand that I am purchasing the Stock pursuant to the terms of the Plan, the Notice of Grant of Stock Option and my Award Agreement, copies of which I have received and carefully read and understand.

Very truly yours,

\_\_\_\_\_  
(Signature)

Receipt of the above is hereby acknowledged.

ProPhase Labs, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

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**PRESS RELEASE****PROPHASE LABS, INC. ANNOUNCES  
NEW COMPENSATORY ARRANGEMENT WITH CHIEF EXECUTIVE OFFICER  
AND TERMINATION OF STOCKHOLDER RIGHTS PLAN**

DOYLESTOWN, PA — (Globe Newswire – February 20, 2018) — ProPhase Labs, Inc. (NASDAQ: PRPH, [www.ProPhaseLabs.com](http://www.ProPhaseLabs.com)), a vertically integrated and diversified branding, marketing and technology company with deep experience in over-the-counter dietary supplements and remedies (“ProPhase” or “Company”), announced today that its Board of Directors has approved a new employment agreement with Ted Karkus, the Company’s Chief Executive Officer, which will become effective February 23, 2018.

Pursuant to the terms of the new employment agreement, Mr. Karkus has voluntarily agreed to reduce his base salary from the current rate of not less than \$675,000 per annum, as set forth in his prior employment agreement, to a base salary of \$125,000 per annum through February 22, 2021.

The Board of Directors and Mr. Karkus have determined that it is in the best interests of the Company and its stockholders to reduce the cash compensation payable to Mr. Karkus in order to further align Mr. Karkus’ interests with the interests of the Company and its stockholders. It will also provide more liquidity to the Company so that the Company may continue to expand its research and development efforts for its over-the-counter dietary supplement initiatives, continue to develop ProPhase Digital Media and pursue potential business opportunities outside of the consumer products industry.

In consideration of Mr. Karkus’ voluntary reduction in base salary, the Board of Directors has agreed to grant Mr. Karkus a stock option to purchase 2,300,000 shares of the Company’s common stock at an above-current-market exercise price of \$3.00 per share. The closing price of the Company’s common stock on February 16, 2018, the date Mr. Karkus’ new compensation arrangement was approved, was \$2.36 per share. The stock option will be granted to Mr. Karkus on February 23, 2018, and will vest and be exercisable in 35 equal monthly installments of 63,888 shares and one monthly installment of 63,290 shares, subject to his continued employment with the Company, and subject to accelerated vesting in the event Mr. Karkus’ employment is terminated for any reason other than by the Company for Cause or by Mr. Karkus without Good Reason (as such terms are defined in the new employment agreement). The Stock Option will be exercisable for a five year term commencing on the date of grant.

The terms of the new employment agreement with Mr. Karkus provide that the new agreement will be null and void if it is not approved by the requisite vote of the Company’s stockholders (excluding Mr. Karkus) at a meeting of stockholders to be held no later than September 30, 2018. In the event the Company’s stockholders do not approve the new employment agreement, Mr. Karkus’ prior employment agreement will be reinstated, and his prior base salary of \$675,000 will be reinstated, retroactive to the effective date of the new employment agreement. In such event, the stock option will terminate and be cancelled. The stock option may not be exercised unless and until the requisite stockholder approval is attained.

The Board of Directors has also voted to terminate the Company’s Rights Agreement, effective February 20, 2018. Stockholders are not required to take any action as a result of the termination. The termination has been effected by amending the Rights Agreement to accelerate its expiration date to February 20, 2018. In connection with the termination of the rights agreement, the Company will be taking routine actions to voluntarily deregister the related common stock purchase rights under the Securities Exchange Act of 1934, as amended. These actions are administrative in nature and will have no effect on the Company’s common stock, which will continue to be listed on the Nasdaq Capital Market.

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### **About ProPhase Labs**

ProPhase is a vertically integrated manufacturer, marketer and distributor of a diversified range of over-the-counter (“OTC”) dietary supplements. We are engaged in the research and development of additional OTC dietary supplements, including Legendz XL, which are marketed under our TK Supplements brand. The Company is also developing ProPhase Digital Media as a service that leverages and applies technology to the direct-to-consumer marketing of consumer products. With our enhanced liquidity following the sale of our Cold-EEZE brand, we are also actively exploring additional opportunities outside of the consumer products industry. For more information visit us at [www.ProPhaseLabs.com](http://www.ProPhaseLabs.com).

### **Forward-Looking Statements**

All statements contained in this press release, other than statements of historical fact, are forward-looking statements. These statements speak only as of the date of this press release and are based on our current plans and expectations and involve risks and uncertainties that could cause actual future events or results to be different from those described in or implied by such forward-looking statements, including risks and uncertainties relating to our research and development efforts and exploration of potential business opportunities and uncertainties related to our ability to secure the requisite stockholder approval for the new employment agreement with Mr. Karkus. Further information about these matters can be found in our Securities and Exchange Commission filings. Except as required by applicable law or regulation, we do not undertake any obligation to update our forward-looking statements to reflect future events or circumstances.

### **Investor Contact**

Ted Karkus, Chairman and CEO  
ProPhase Labs, Inc.  
(267) 880-1111

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