

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): April 5, 2011

NEKTAR THERAPEUTICS  
(Exact Name of Registrant as Specified in Charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation)

0-24006  
(Commission  
File Number)

94-3134940  
(IRS Employer  
Identification No.)

455 Mission Bay Boulevard South  
San Francisco, California 94158  
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (650) 631-3100

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On April 5, 2011, the Board of Directors (the “Board”) of Nektar Therapeutics, a Delaware corporation (the “Company”), approved and adopted, effective immediately, the Amended and Restated Bylaws of the Company (the “Amended and Restated Bylaws”).

The Amended and Restated Bylaws revised the voting standards for director elections by requiring that each nominee shall be elected by a majority of votes cast with respect to the director’s election in an uncontested election where the number of nominees for election does not exceed the number of directors to be elected. A majority of votes cast is defined to mean that the number of shares voted “for” a director’s election exceeds 50% of the number of votes cast with respect to that director’s election, with votes cast including votes to withhold authority in each case and excluding abstentions with respect to that director’s election. Directors will continue to be elected by a plurality of votes cast in a contested election where the number of nominees for election exceeds the number of directors to be elected.

The Amended and Restated Bylaws also added certain advance notice requirements for stockholders to propose director nominations or other business to be brought before an annual or special meeting of stockholders, which requirements include, among other things, the following:

- any stockholder that proposes director nominations or other business must be a stockholder of record at the time the advance notice is delivered by such stockholder to the Company and be entitled to vote at the meeting;
  - no public announcement by the Company of an adjustment or postponement of an annual or special meeting shall commence or extend a new time period for the giving of the advance notice by any stockholder;
  - in addition to the information specified in the Company’s original Bylaws, a stockholder’s advance notice with respect to any proposed business (other than nominations) shall set forth (i) the text of the proposal (including the text of any resolutions or bylaw amendments proposed for consideration), (ii) any material interest in such business of such stockholder and the beneficial owners, if any, on whose behalf the proposal is made, (iii) a description of any agreement, arrangement or understanding with respect to the proposal between the stockholder and any beneficial owner, their affiliates and any others acting in concert, (iv) a description of any agreement, arrangement or understanding (including, among other things, derivative or short positions, profit interests and hedging transactions) that has been entered into by, or on behalf of, the stockholder and any beneficial owner, (v) a representation that the stockholder is a stockholder of record entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to propose such business and (vi) a representation whether the stockholder or any beneficial owner intends or is part of a group which intends to deliver a proxy statement or form of proxy to stockholders required to approve or adopt the proposal or otherwise to solicit proxies or votes from stockholders in support of such proposal;
  - the stockholder proposing a director nominee may be required to furnish other information as the Company may reasonably require to determine the eligibility of the proposed nominee to serve as a director of the Company in addition to the information explicitly required in the Amended and Restated Bylaws;
  - the stockholder proposing director nominations or other business shall update and supplement the advance notice so that the information provided shall be true and correct as of the record date for the meeting and as of the date that is 10 business days prior to the meeting;
  - the chairman of the meeting shall have the power and duty to (i) determine whether any director nomination or other business was made or proposed in accordance with the procedures set forth in the Amended and Restated Bylaws and (ii) declare that any director nomination or other business shall not be made or transacted at the meeting if it was not made or proposed in accordance with such procedures; and
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any director nomination or other business shall not be made or transaction if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present the director nominee or other proposed business.

Other major substantive revisions set forth in the Amended and Restated Bylaws include that (i) the Board can fix separate record dates for determining stockholders entitled to receive notice of a stockholder meeting and for determining stockholders entitled to vote at the meeting and (ii) the Company may hold a stockholder meeting by means of remote communications and make available a list of stockholders entitled to vote at the meeting on a reasonably accessible electronic network for examination by stockholders.

The foregoing summary of the major substantive revisions set forth in the Amended and Restated Bylaws is not complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws. A copy of the Amended and Restated Bylaws is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

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

On April 5, 2011, the Board amended and restated the Company's existing Change of Control Severance Benefit Plan (the "Restated Plan") to eliminate the tax gross-up payment benefit to participants who joined the Restated Plan on or after January 1, 2010 and whose payments received under the Restated Plan would be subject to the excise tax imposed under the Internal Revenue Code Section 4999 (the "Excise Tax").

Under the Restated Plan, "New Participants" will not be entitled to gross-up payments to cover any Excise Tax payable by the participant as a result of payments received under the Restated Plan. The Restated Plan defines "New Participants" to include each participant that either (i) commenced employment with the Company on or after January 1, 2010; or (ii) commenced employment prior to January 1, 2010 but was promoted on or after January 1, 2010 to a position such that the participant would be eligible for additional benefits under the Restated Plan as a result of the promotion. Participants in the Restated Plan who are not New Participants will continue to be entitled to the Excise Tax gross-up benefit provided in the Restated Plan if the Excise Tax would still be imposed on the participant's payments after application of a ten percent (10%) reduction in the payments.

The foregoing description of the amendments to the Restated Plan is qualified in its entirety by reference to the text of the Restated Plan, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

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

<b>Exhibit No.</b>	<b>Description</b>
3.1	Amended and Restated Bylaws of Nektar Therapeutics, dated April 5, 2011.
10.1	Nektar Therapeutics Amended and Restated Change of Control Severance Benefit Plan.

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## SIGNATURES

Pursuant to the requirement of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

By: /s/ Gil M. Labrucherie

Gil M. Labrucherie  
*General Counsel and Secretary*

Date: April 11, 2011

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**Item 9.01 Financial Statements and Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
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| 3.1  | Amended and Restated Bylaws of Nektar Therapeutics, dated April 5, 2011.           |
| 10.1 | Nektar Therapeutics Amended and Restated Change of Control Severance Benefit Plan. |
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**AMENDED AND RESTATED  
BYLAWS  
OF  
NEKTAR THERAPEUTICS  
(A DELAWARE CORPORATION)**

**ARTICLE I**

**OFFICES**

**SECTION 1. REGISTERED OFFICE.** The registered office of the corporation in the State of Delaware shall be as set forth in the Certificate of Incorporation of the corporation, as amended from time to time (the "Certificate of Incorporation").

**SECTION 2. OTHER OFFICES.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**CORPORATE SEAL**

**SECTION 3. CORPORATE SEAL.** The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III**

**STOCKHOLDERS' MEETINGS**

**SECTION 4. PLACE OF MEETINGS.** Meetings of the stockholders of the corporation shall be held at such place, if any, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors.

**SECTION 5. ANNUAL MEETINGS.**

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

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(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. Stockholders seeking to nominate persons for election to the Board of Directors must comply with paragraph (c) below, and this paragraph (b) shall not be applicable to nominations except as expressly provided in paragraph (c) below. To be properly brought before an annual meeting, business (other than nominations) must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors or any committee thereof, or (C) otherwise properly brought before the meeting in compliance with this Section 5 by a stockholder of the corporation who was a stockholder of record of the corporation at the time notice provided for in this Section 5 is delivered to the Secretary of the corporation and who is entitled to vote at the meeting. For such business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of this paragraph (b), the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to, or mailed and received by, the Secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the sixtieth (60th) day, nor earlier than the close of business on the ninetieth (90th) day, prior to the first anniversary of the preceding year's annual meeting; provided, however, in the event the date of the annual meeting is more than thirty (30) days before or more than thirty (30) days after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the close of business on the ninetieth (90th) day prior to such date of the annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of capital stock of the corporation which are owned beneficially and of record by the stockholder, (iv) any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (v) a description of any agreement, arrangement or understanding with respect to the proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (vi) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owner (if any), whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the corporation, (vii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (viii) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies or votes from stockholders in support of such proposal, and (ix) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), and the rules and regulations promulgated thereunder. The foregoing notice requirements of this paragraph (b) shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the 1934 Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting.

(c) Only persons who are nominated in accordance with the procedures set forth in this paragraph (c) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at an annual meeting or at a special meeting of stockholders (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) only (A) by or at the direction of the Board of Directors or any committee thereof, or (B) by any stockholder of the corporation who was a stockholder of record of the corporation at the time notice provided for in this paragraph (c) is delivered to, or mailed and received by, the Secretary of the corporation, who is entitled to vote at the meeting, and who complies with the notice procedures set forth in this paragraph (c). Any nomination made under clause (B) of this paragraph (c) shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 5. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (1) the name, age, business address and residence address of such person, (2) the principal occupation or employment of such person, (3) the class and number of shares of the corporation which are beneficially owned by such person, (4) a description of all arrangements or understandings between the stockholder giving notice (and the beneficial owner, if any, on whose behalf such notice is given) and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder and beneficial owner, if any, (4) all other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the 1934 Act, and (5) such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected; and (ii) as to such stockholder giving notice and the beneficial owner, if any, on whose behalf such notice is given, the information required to be provided pursuant to paragraph (b) of this Section 5 with respect to a stockholding giving notice of business thereunder and the beneficial owner, if any, on whose behalf such notice is given. The corporation may require any proposed nominee to furnish such other information as the corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph (c). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.



(d) A stockholder providing notice pursuant to paragraph (b) or (c) above, as the case may be, shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to paragraph (b) or (c) above, as applicable, 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 of the corporation 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), or 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) Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether any business proposed to be brought before the meeting pursuant to paragraph (b) above, or any nomination made pursuant to paragraph (c) above, was proposed or made, as the case may be, in accordance with the procedures set forth in paragraph (b) or paragraph (c), as the case may be, including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is brought or nomination is made, as applicable, solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by paragraph (b) or paragraph (c), as applicable) and (ii) if any proposed business or nomination was not proposed or made in compliance with paragraph (b) or paragraph (c), as applicable, to declare that such proposed business or nomination shall not be transacted or made. Notwithstanding the foregoing provisions of this Section 5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present any proposed business or nominee, such proposed business shall not be transacted, and such nomination shall not be made, notwithstanding that proxies in respect thereof may have been received by the corporation.

(f) Notwithstanding the foregoing provisions of this Section 5, a stockholder shall also comply with all applicable requirements of the 1934 Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 5; provided, however, any references in these Bylaws to the 1934 Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 5, and compliance with paragraphs (b) and (c) of this Section 5 shall be the exclusive means for a stockholder to make nominations or submit other business (other than proposals properly made under and in compliance with Rule 14a-8 of the 1934 Act, as may be amended from time to time). Nothing in this Section 5 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the corporation's proxy statement pursuant to applicable rules and regulations promulgated under the 1934 Act or (b) of the holders of any series of preferred stock of the corporation ("Preferred Stock") to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(g) For purposes of this Section 5, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act and the rules and regulations promulgated thereunder. For purposes of this Section 5, to be considered a “qualified representative” of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

## **SECTION 6. SPECIAL MEETINGS.**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), or (iv) by the Secretary of the corporation at the request of the holders of the shares entitled to cast not less than ten percent (10%) of the votes at a meeting of stockholders (assuming all shares entitled to vote at such meeting were present and voted), and shall be held at such place, if any, on such date, and at such time as the Board of Directors shall fix.

(b) If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. The Board of Directors shall determine the date, time and place, if any, of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the date, time and place (if any) of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation’s notice of meeting.

(c) In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation’s notice of meeting if the stockholder delivers notice of such nomination to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the ninetieth (90<sup>th</sup>) day prior to such special meeting and not later than the close of business on the later of the sixtieth (60<sup>th</sup>) day prior to such special meeting or, in the event public announcement of the date of such special meeting is first made by the corporation fewer than seventy (70) days prior to the date of such special meeting, the close of business on the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above. Such notice shall contain all such information required to be included, and such otherwise comply with, a stockholder’s notice of nomination delivered pursuant to paragraph (c) of Section 5.

(d) Nothing contained in this Section 6 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**SECTION 7. NOTICE OF MEETINGS.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting), and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

**SECTION 8. QUORUM.** At all meetings of stockholders, except where otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

**SECTION 9. ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, 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 for determination of stockholders entitled to vote at the meeting is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

**SECTION 10. VOTING RIGHTS.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date for determining stockholders entitled to vote, as determined in accordance with Section 37 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person or by a proxy granted in accordance with Delaware law. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, any question or matter submitted to a vote of stockholders shall be approved by the holders of a majority of the votes cast thereon; provided, however, directors shall be elected by a plurality of the votes cast if, as of the date of the meeting of the stockholders, the number of nominees exceeds the number of directors to be elected. In relation to the election of a director at a meeting where the number of nominees does not exceed the number of directors to be elected, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds fifty percent (50%) of the number of votes cast with respect to that director’s election, with votes cast including votes to withhold authority in each case and excluding abstentions with respect to that director’s election. Notwithstanding anything to the contrary set forth in these Bylaws, (x) the non-binding advisory vote with respect to executive compensation pursuant to Section 14A(a)(1) of the 1934 Act, and the rules and regulations promulgated thereunder, shall require the affirmative vote of a majority of the votes cast thereon, and (y) the non-binding advisory vote, pursuant to Section 14A(a)(2) of the 1934 Act, and the rules and regulations promulgated thereunder, with respect to the determination as to whether the vote described in the preceding clause (x) shall occur every one (1), two (2) or three (3) years shall be decided by a plurality of the votes cast. For purposes of this Section 10, neither abstentions nor broker non-votes shall count as votes cast.

**SECTION 11. JOINT OWNERS OF STOCK.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of the State of Delaware (the “General Corporation Law”), Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**SECTION 12. LIST OF STOCKHOLDERS.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 12 or to vote in person or by proxy at any meeting of stockholders.

**SECTION 13. ACTION WITHOUT MEETING.** Unless otherwise provided in the Certificate of Incorporation, no action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent.

**SECTION 14. ORGANIZATION.**

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

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

## ARTICLE IV

### DIRECTORS

**SECTION 15. NUMBER AND TERM OF OFFICE.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation.

**SECTION 16. POWERS.** The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

**SECTION 17. CLASSES OF DIRECTORS.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three classes as provided in the Company's Certificate of Incorporation, as amended from time to time.

**SECTION 18. VACANCIES.** Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes, and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

**SECTION 19. RESIGNATION.** Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective when delivered. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**SECTION 20. REMOVAL.** Subject to the rights of the holders of any series of Preferred Stock, no director shall be removed without cause. Subject to any limitations imposed by law, the Board of Directors or any individual director may be removed from office at any time with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of voting stock of the corporation, entitled to vote at an election of directors (the "Voting Stock").

**SECTION 21. MEETINGS.**

(a) **ANNUAL MEETINGS.** The annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) **REGULAR MEETINGS.** Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

(c) **SPECIAL MEETINGS.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the directors.

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

(e) **NOTICE OF MEETINGS.** Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting.

**SECTION 22. QUORUM AND VOTING.**

(a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Section 43 hereof, for which a quorum shall be one-third of the exact number of directors fixed from time to time in accordance with the Certificate of Incorporation, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

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

**SECTION 23. ACTION WITHOUT MEETING.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings (or electronic transmission(s)) are filed with the minutes of proceedings of the Board of Directors or committee.

**SECTION 24. FEES AND COMPENSATION.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**SECTION 25. COMMITTEES.**

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

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



(c) **TERM.** Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Section 25 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death, voluntary resignation from the committee or from the Board of Directors, removal from such committee or the Board of Directors, or disqualification as a Director or member of the committee. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal, disqualification or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **MEETINGS.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

#### **SECTION 26. ORGANIZATION; CHAIRMAN OF THE BOARD OF DIRECTORS.**

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

(b) The Chairman of the Board of Directors, when present, or another person designated by the Chairman of the Board of Directors, shall preside at all meetings of the stockholders. The Chairman of the Board of Directors shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (b) of Section 28 hereof.

## ARTICLE V

### OFFICERS

**SECTION 27. OFFICERS DESIGNATED.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

### SECTION 28. TENURE AND DUTIES OF OFFICERS.

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

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

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

(d) **DUTIES OF SECRETARY.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

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

**SECTION 29. DELEGATION OF AUTHORITY.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**SECTION 30. RESIGNATIONS.** Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**SECTION 31. REMOVAL.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

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

**SECTION 32. EXECUTION OF CORPORATE INSTRUMENTS.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law, the Certificate of Incorporation or these Bylaws, and such execution or signature shall be binding upon the corporation. Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, or the President or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors. All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**SECTION 33. VOTING OF SECURITIES OWNED BY THE CORPORATION.** All stock and other securities of other corporations or entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

### SHARES OF STOCK

**SECTION 34. FORM AND EXECUTION OF CERTIFICATES.** Shares of the capital stock of the corporation shall be represented by certificates; provided, however, the Board of Directors may provide by resolution that some or all of any or all classes or series of its stock shall be uncertificated shares. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President, and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Any or all of the signatures on the certificates may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

**SECTION 35. LOST CERTIFICATES.** A new certificate or certificates or uncertificated shares may be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates or uncertificated shares, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**SECTION 36. TRANSFERS.**

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

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

**SECTION 37. FIXING RECORD DATES.** In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

**SECTION 38. REGISTERED STOCKHOLDERS.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

## ARTICLE VIII

### OTHER SECURITIES OF THE CORPORATION

**SECTION 39. EXECUTION OF OTHER SECURITIES.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

### DIVIDENDS

**SECTION 40. DECLARATION OF DIVIDENDS.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

**SECTION 41. DIVIDEND RESERVE.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

**ARTICLE X**

**FISCAL YEAR**

**SECTION 42. FISCAL YEAR.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

**ARTICLE XI**

**INDEMNIFICATION**

**SECTION 43. INDEMNIFICATION OF DIRECTORS, EXECUTIVE OFFICERS, OTHER OFFICERS, EMPLOYEES AND AGENTS.**

(a) **DIRECTORS AND EXECUTIVE OFFICERS.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent permitted by the General Corporation Law; provided, however, the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; provided, further, the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized in the first instance by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the General Corporation Law or (iv) such indemnification is required to be made under paragraph (d) of this Section 43.

(b) **OTHER OFFICERS, EMPLOYEES AND AGENTS.** The corporation shall have power to indemnify its other officers, employees and agents to the fullest extent permitted by the General Corporation Law.

(c) **EXPENSES.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer 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, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by such person in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Section 43 or otherwise. Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 43, no advance shall be made by the corporation to an executive officer of the corporation or to any person serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, (except by reason of the fact that such person is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) **ENFORCEMENT.** Without the necessity of entering into an express contract, all rights to indemnification and advances under this Section 43 shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the person entitled thereto. Any right to indemnification or advances granted by this Section 43 to such person shall be enforceable by or on behalf of such person in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled, to the fullest extent permitted by law, to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the General Corporation Law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation or any person serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) **NON-EXCLUSIVITY OF RIGHTS.** The rights conferred on any person by this Section 43 shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent permitted by the General Corporation Law.



(f) SURVIVAL OF RIGHTS. The rights conferred on any person by this Section 43 shall continue as to a person who has ceased to be a director, officer, employee or agent of the corporation (or who has ceased to serve, at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall inure to the benefit of the heirs, executors and administrators of such person.

(g) INSURANCE. To the fullest extent permitted by the General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 43.

(h) AMENDMENTS. Any repeal or modification of this Section 43 shall only be prospective and shall not affect the rights under this Section 43 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) SAVING CLAUSE. If this Section 43 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent permitted by any applicable portion of this Section 43 that shall not have been invalidated, or by any other applicable law.

(j) CERTAIN DEFINITIONS. For the purposes of this Article XI, the following definitions shall apply: (1) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative. (2) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding. (3) The term “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article XI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. (4) References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise. (5) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Article XI.

## ARTICLE XII

### NOTICES

#### SECTION 44. NOTICES.

(a) NOTICE TO STOCKHOLDERS. Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent, or by electronic transmission in accordance with applicable law.

(b) NOTICE TO DIRECTORS. Any notice required to be given to any director may be given personally or by any method stated in subsection (a); provided that any notice delivered by mail shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) AFFIDAVIT OF MAILING OR ELECTRONIC TRANSMISSION. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the corporation that notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(d) TIME NOTICES DEEMED GIVEN. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by electronic transmission shall be deemed to have been given as provided by applicable law.

(e) METHODS OF NOTICE. It shall not be necessary that the same method of giving notice be employed in respect of all directors or stockholders, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(f) FAILURE TO RECEIVE NOTICE. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

(g) NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL. Whenever notice is required to be given, under any provision of law, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(h) NOTICE TO PERSON WITH UNDELIVERABLE ADDRESS. Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or these Bylaws, to any stockholder to whom (i) notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two (2) consecutive annual meetings, or (ii) all, and at least two (2), payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

(i) WAIVER. Whenever notice is required to be given under any provision of the General Corporation Law, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission 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 or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

**ARTICLE XIII**

**AMENDMENTS**

**SECTION 45. AMENDMENTS.** Subject to paragraph (h) of Section 43 of these Bylaws, these Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock. The Board of Directors shall also have the power to adopt, amend, or repeal these Bylaws.

**ARTICLE XIV**

**LOANS TO OFFICERS**

**SECTION 46. LOANS TO OFFICERS.** The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**NEKTAR THERAPEUTICS**  
**AMENDED AND RESTATED CHANGE OF CONTROL**  
**SEVERANCE BENEFIT PLAN**  
**PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION**

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**NEKTAR THERAPEUTICS  
AMENDED AND RESTATED  
CHANGE OF CONTROL SEVERANCE BENEFIT PLAN**

**PLAN DOCUMENT AND SUMMARY PLAN DESCRIPTION**

**Section 1. Introduction**

The Nektar Therapeutics Amended and Restated Change of Control Severance Benefit Plan (the “Plan”) is designed to provide severance benefits to eligible employees of Nektar Therapeutics (the “Company” or “Nektar”) whose employment is involuntarily terminated by the Company following a Change of Control (as defined below). The Plan was initially approved by the Company’s Board of Directors (the “Board of Directors”) on December 6, 2006 and last amended and restated by the Board of Directors on April 5, 2011. The Plan supersedes any prior plan, policy or practice involving the payment of severance benefits by Nektar in the event of an involuntary termination that occurs in connection with or following a Change of Control. While the Plan is in effect, any severance benefits provided to an employee by the Company with respect to an employee’s involuntary termination in connection with or following a Change of Control must be paid pursuant to the Plan or pursuant to an express written agreement between Nektar and the individual employee.

The Plan is designed to be an “employee welfare benefit plan,” as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and, accordingly, this Plan is governed by ERISA. This document constitutes both the official plan document and the required summary plan description under ERISA.

**Section 2. Eligibility For Participation in the Plan**

Each employee of the Company is eligible to participate in the Plan; provided, however, that an employee who has an individual agreement with the Company providing for severance benefits with respect to termination of employment with the Company in connection with or following a Change of Control that would otherwise be covered by this Plan shall not be eligible to participate in this Plan (i.e. an eligible employee cannot receive severance benefits both under their individual agreement and this Plan), and an individual who is not treated as an employee of the Company for payroll and income tax withholding purposes or who is treated as a consultant or independent contractor, regardless of a court or agency’s determination of employee status of such person during any period for any purpose, shall not be eligible to participate in this Plan.

**Section 3. Eligibility For Severance Benefits**

3.1 Conditions for Eligibility. To be eligible to receive severance benefits under the Plan, in addition to meeting the requirements for eligibility to participate in the Plan, the participant must terminate employment with the Company under circumstances that the Plan Administrator determines constitute a Covered Termination, and the participant must meet the following conditions:

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- The participant must execute and deliver to the Company a Separation and General Release Agreement in substantially the form attached hereto as Exhibit A and must not revoke such agreement within any revocation period provided under applicable law.
- If the participant is notified by the Company or Successor Company that his or her employment will be terminated following a Change of Control in advance of his or her termination date, the participant must not voluntarily terminate his or her employment or fail to perform his or her assigned duties prior to the termination date established by the Company or Successor Company.
- The participant must not at any time have engaged in conduct that would be Cause for termination, as defined in Section 3.3 below, as determined by the Plan Administrator in its sole discretion. The Plan Administrator shall have the discretion to terminate any and all severance benefits provided under this Plan to a participant who is discovered to have engaged in such conduct, regardless of when such discovery occurs.

3.2 Covered Termination. For purposes of this Plan, a Covered Termination is an involuntary termination of the participant's employment with the Company or Successor Company in conjunction with a Change of Control under the circumstances described below applicable to the participant, as follows:

- Officer Participants. For a participant who is an officer holding a position of Chief Executive Officer, President, Senior Vice President, Vice President or Principal Fellow (an "Officer Participant"), a Covered Termination is the involuntary termination of the participant's employment by the Company or Successor Company without Cause, other than on account of the participant's death or disability, or the participant's Good Reason Resignation, which (i) termination occurs at the request of a third party in the context of discussions regarding a Change of Control or (ii) termination or resignation occurs within the period beginning with the execution of an agreement providing for a Change of Control (and such Change of Control is consummated) and ending 12 months following the Change of Control.

- Non-Officer Participants. For any other participant (a "Non-Officer Participant"), a Covered Termination is the involuntary termination of the participant's employment by the Company or Successor Company without Cause, other than on account of the participant's death or disability, which termination occurs within the period beginning on the date of the Change of Control and ending 12 months following the Change of Control.

· **Termination of Employment - Asset Sale.** Notwithstanding anything else contained in this Plan to the contrary, a participant shall not be entitled to benefits under this Plan as a result of a termination of the participant's employment with the Company or Successor Company if such termination of employment occurs in connection with a sale of assets by the Company or Successor Company and each of the following conditions is satisfied in connection with such sale: (1) the participant becomes employed by the purchaser (which term shall include for these purposes a parent, subsidiary, or other affiliated entity of such purchaser) of such assets upon or within sixty (60) days following such sale or such purchaser offers the participant employment effective upon or within sixty (60) days following such sale (regardless of whether the participant actually accepts or commences such employment) on substantially the same terms; and (2) such purchaser adopts this Plan (or a substantially similar severance plan) to provide the participant with substantially the same severance protections afforded by this Plan had this Plan continued in effect as to the participant after such sale on its terms (subject, without limitation, to any such entity's right to terminate this Plan as provided herein). Whether employment is on "substantially the same terms" for this purpose shall be determined by comparing the relevant aspects of the terms of the participant's employment before giving effect to such asset sale to the relevant aspects of the terms of the participant's employment (or offer of employment, as the case may be) with the purchaser after giving effect to such asset sale (in each case relative to the Company and its subsidiaries, or the purchaser and its parent, subsidiary, and other affiliated entities, as the case may be, on a consolidated basis, not simply with reference to the participant's employer).

3.3 **Cause.** For purposes of this Plan, Cause shall mean, as determined by the Plan Administrator:

- An employee's conviction of any felony or any crime involving fraud, dishonesty or moral turpitude;
- An employee's commission of, or participation in, a fraud or act of dishonesty against the Company or Successor Company that materially benefits the employee;
- An employee's intentional, material violation of any contract or agreement between the employee and the Company or Successor Company or of any statutory or fiduciary duty owed to the Company or Successor Company;
- An employee's intentional unauthorized use of Company or Successor Company property that materially benefits the employee or intentional unauthorized use or disclosure of Company or Successor Company confidential information or trade secrets;
- An employee's intentional gross misconduct or intentional material failure to comply with the Company's or Successor Company's written policies; or
- An employee's intentional material failure or refusal to perform his or her position responsibilities, other than on account of a mental or physical disability.

No act or failure to act on the part of an individual shall be considered "intentional" unless done, or omitted to be done, by that individual not in good faith and without reasonable belief that such individual's action or omission was in the best interest of the Company. In no event shall mere failure to achieve desired strategic, operational, financial or other results constitute Cause.



3.4 Good Reason Resignation. For purposes of this Plan, an Officer Participant's Good Reason Resignation shall mean a voluntary resignation by the Officer Participant following the occurrence of any of the following conditions without the Officer Participant's express written consent:

- Assignment of any authority, duties or responsibilities that results in a material diminution in the participant's authority, duties or responsibilities as in effect immediately prior to the Change of Control.
- Assignment to a work location more than 50 miles from the participant's immediately previous work location, unless such reassignment of work location decreases the participant's commuting distance from his or her residence to his or her assigned work location.
- A material diminution in the participant's monthly base salary as in effect on the date of the Change of Control or as increased thereafter.
- Notice to the participant by the Company or Successor Company during the 12-month period following the Change of Control that the participant's employment will be terminated under circumstances that would be a Covered Termination but for the designation of a date for termination that is greater than 12 months following the Change of Control (provided that such participant does in fact terminate his or her employment within the time period prescribed below).
- In the case of the Chief Executive Officer and President, such individual does not serve in that position in the Successor Company (as defined below) and/or is not appointed to the board of directors of the Successor Company.

provided, however, that any such condition shall not constitute grounds for a Good Reason Resignation unless both (x) the Officer Participant provides written notice to the Company of the condition claimed to constitute grounds for the Good Reason Resignation within sixty (60) days of the initial existence of such condition, and (y) the Company fails to remedy such condition within thirty (30) days of receiving such written notice thereof; and provided, further, that in all events the termination of the Officer Participant's employment with the Company shall not be treated as a Good Reason Resignation unless such termination occurs not more than six (6) months following the initial existence of the condition claimed to constitute "Good Reason."

3.5 Change of Control. A Change of Control with respect to the Company shall mean any of the following events or circumstances:

- The sale, lease or other disposition of all or substantially all of the Company's assets;
- The acquisition of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities, other than by virtue of a merger, consolidation or similar transaction;

- The merger, consolidation or similar transaction involving the Company, immediately after which the stockholders of the Company immediately prior thereto do not own either (i) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (ii) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such transaction; or
- Individuals who, on the date the Plan is adopted by the Board, are members of the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the members of the Board, provided, however, that if the appointment or election of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of the Plan, be considered as a member of the Incumbent Board.

In the event of a Change of Control following which Nektar is not the surviving entity, the surviving entity for purposes of this Plan is the “Successor Company.”

#### **Section 4. Severance Benefits**

A participant who is eligible to participate in this Plan in accordance with Section 2 and who becomes eligible to receive severance benefits under this Plan as determined under Section 3 shall be entitled to receive, subject to the terms and conditions herein, the following severance benefits set forth in this Section 4:

4.1 Cash Severance Pay; Amount. The amount of a participant’s Cash Severance Pay benefit under this Plan shall be determined based on position title as follows, and then reduced as specified below:

- Chief Executive Officer and President: Cash Severance Pay shall equal 24 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- Senior Vice Presidents, Vice Presidents and Principal Fellows: Cash Severance Pay shall equal 12 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.
- All Other Participants: Cash Severance Pay shall equal 6 months of monthly base salary plus annual target incentive pay as in effect immediately prior to the Covered Termination or for the immediately preceding calendar year, whichever is greater.

Cash Severance Pay shall be reduced by each of the following:

any severance benefits (including, without limitation, any other change-in-control severance benefits and any other severance benefits generally) that the participant may be entitled to under any other plan or program with the Company. For purposes of the foregoing, any cash severance benefits payable to the participant under any other plan or program with the Company (including, without limitation, the Company's Severance Benefit Plan or any similar successor plan) shall offset the Cash Severance Pay otherwise payable to the participant under this Plan on a dollar-for-dollar basis. For purposes of the foregoing, non-cash severance benefits to be provided to the participant under any other plan or program with the Company shall offset any corresponding benefits otherwise to be provided to the participant under this Plan or, if there are no corresponding benefits otherwise to be provided to the participant under this Plan, the value of such benefits shall offset the cash severance benefits otherwise payable to the participant under this Plan on a dollar-for-dollar basis. If the amount of other benefits to be offset against the Cash Severance Pay otherwise payable to the participant under this Plan in accordance with the preceding two sentences exceeds the amount of Cash Severance Pay otherwise payable to the participant under this Plan, then the excess may be used to offset other non-cash severance benefits otherwise to be provided to the participant under this Plan on a dollar-for-dollar basis. For purposes of this paragraph, the Plan Administrator shall reasonably determine the value of any non-cash benefits;

any wages or wage replacement benefits paid or payable to the participant with respect to any applicable notice period (including any pay in lieu of notice) in connection with the participant's termination of employment, whether such notice period is required under the Worker Adjustment and Retraining Notification Act or any state law with respect to notice, if applicable, or any Company policy, or any written agreement between the participant and the Company;

the amount of any wages or other compensation the participant has received during a leave of absence in excess of his or her accrued paid time off (other than disability plan income replacement benefits); and

to the extent permitted by law, by any debt that the participant owes the Company at the time the Cash Severance Pay becomes payable;

provided that any reduction or offset under this provision does not create an impermissible acceleration of payments under Treasury Regulation Section 1.409A-1(j) to the extent that Section 409A of the U.S. Internal Revenue Code of 1986, as amended (the "Code") applies.

4.2 Cash Severance Pay: Time of Payment. The Cash Severance Pay for which a participant is eligible under this Plan will be paid to the participant in a lump sum cash payment no later than sixty (60) days following the date on which the participant's Separation from Service (as defined below) occurs, subject to the provisions of Section 3.1, but no event will any payment be made under this Plan after the end of the short-term deferral period as defined in Treasury Regulation section 1.409A-1(b)(4). Notwithstanding the foregoing sentence, if the participant is a "specified employee" within the meaning of Treasury Regulation section 1.409A-1(i) as of the date of the participant's Separation from Service, the participant shall not be entitled to any payment of Cash Severance Pay until the earlier of (i) the date which is six (6) months after the participant's Separation from Service for any reason other than death, or (ii) the date of the participant's death. Any amounts otherwise payable to the participant upon or in the six (6) month period following the participant's Separation from Service that are not so paid by reason of this paragraph shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the participant's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the participant's death). The provisions of this paragraph relating to the delay of payment shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Code Section 409A.

As used herein, a participant's "Separation from Service" occurs when the participant dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

4.3 COBRA Premiums. For an eligible participant who is covered by one or more of the Company's group health plans on the date of termination of employment and who makes a timely election to continue such coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Company will pay the portion of such participant's COBRA premium equal to the portion of such group health plan premium cost the Company pays for active employees for the number of months base salary represented by the participant's Cash Severance Pay determined under Section 4.1 for up to a maximum of eighteen (18) months; provided that such payment of a portion of the COBRA premium by the Company shall cease earlier on the date the participant becomes eligible for group medical, dental or vision coverage through a subsequent employer. To the extent that the payment of any COBRA premiums pursuant to this Section 4.3 is taxable to the participant, any such payment shall be paid to the participant on or before the last day of the participant's taxable year following the taxable year in which the related expense was incurred. The participant's right to payment of such premiums is not subject to liquidation or exchange for another benefit and the amount of such benefits that the participant receives in one taxable year shall not affect the amount of such benefits that the participant receives in any other taxable year.

4.4 Outplacement Program. An eligible participant shall receive reimbursement for reasonable outplacement services up to a maximum of \$5,000 for services received within 12 months following the participant's Separation from Service, any such reimbursement to be made in accordance with the Company's reimbursement policies generally and in all events not later than the end of the calendar year following the year in which the related expense was incurred. The participant's right to benefits under this Section 4.4 is not subject to liquidation or exchange for another benefit and the amount of such benefits that the participant receives in one taxable year shall not affect the amount of such benefits that the participant receives in any other taxable year.

4.5 Withholding. All cash and reimbursement severance benefits provided under the Plan will be subject to all applicable withholding deductions as required by law.

4.6 Equity Acceleration. An eligible participant will become fully vested in any outstanding stock awards held by such participant as of the date of termination, including restricted stock and stock options unless otherwise provided for in the equity award agreement.

4.7 Limitation on Benefits Subject to Parachute Rules. Notwithstanding Section 4.1 and 4.6, in the event the severance benefits payable hereunder to a participant who is a “disqualified individual” within the meaning of Code Section 280G, together with all other payments to which such participant is entitled in connection with a Change of Control (collectively, the “Payments”), would cause any portion of the Payments to be nondeductible under Code Section 280G and subject to the excise tax imposed under Code Section 4999 (the “Excise Tax”), then:

(i) For each participant other than a New Participant (as defined below), the following rules shall apply:

- (a) If a reduction in the amount of the Payments by an amount up to but not in excess of ten percent (10%) of the amount of the Payments would avoid the imputation of any Excise Tax on the remaining Payments (after such reduction), then the Payments shall be reduced (but not below zero) if and to the extent that such a reduction in the Payments would result in the participant retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if the participant received the entire amount of the Payments. The Company shall reduce or eliminate the Payments by first reducing or eliminating any Cash Severance Pay, then by reducing or eliminating any accelerated vesting of equity awards, then by reducing or eliminating any other remaining Payments.
- (b) If a reduction in the amount of the Payments by 10% of the amount of the Payments would not avoid the imputation of any Excise Tax on the remaining Payments (after such reduction), then the Company shall pay to the participant (or to the applicable taxing authority on participant’s behalf) an additional cash payment (the “Gross-Up Payment”) equal to an amount such that after payment by the participant of all taxes, interest, penalties, additions to tax and costs imposed or incurred with respect to the Gross-Up Payment (including, without limitation, any income and excise taxes imposed upon the Gross-Up Payment), the participant retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon such Payment or Payments. The Gross-Up Payment, if triggered pursuant to this Section 4.7(i)(b), is intended to put the participant in the same position as the participant would have been had no Excise Tax been imposed upon or incurred as a result of any Payment. Any such Gross-Up Payment shall be paid as soon as practicable and in all events no later than the end of the calendar year following the year in which the participant remits the related taxes.

- (ii) For each participant that either (i) commenced employment with the Company on or after January 1, 2010; or (ii) commenced employment prior to January 1, 2010 but on or after January 1, 2010 was promoted to a position that would entitle the participant to additional benefits under this Plan as a result of the promotion (any participant meeting the description of (i) or (ii) is referred to herein as a “New Participant”), the following rule shall apply: If a New Participant’s Payments are subject to the Excise Tax, then the Payments shall be reduced (but not below zero) if and to the extent that such a reduction in the Payments would result in the New Participant retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if the New Participant received the entire amount of the Payments. If the Payments are to be reduced pursuant to the preceding sentence, the Company shall reduce or eliminate the Payments by first reducing or eliminating any Cash Severance Pay, then by reducing or eliminating any accelerated vesting of equity awards, then by reducing or eliminating any other remaining Payments.

#### **Section 5. Notices**

Any notice or other communication under the Plan must be in writing and will be deemed given when delivered personally or when sent by certified or registered mail, return receipt requested, or by overnight courier, addressed as follows or to such other address as any party may hereafter designate in accordance with this provision:

*If to Nektar or the Plan Administrator:*

Nektar Therapeutics  
455 Mission Bay Boulevard South  
San Francisco, CA 94158  
Attn: Vice President, Human Resources

*If to the participant:* to the address appearing in the payroll records of the Company.

#### **Section 6. Claims**

6.1 Initial Claims Procedure. Any employee who does not receive a benefit under the Plan that he or she feels he or she is entitled to receive may make a written claim to the Plan Administrator within 90 days after his or her termination, in accordance with the Notice provisions described above, and which explains the reasons for such claim. The claimant will be informed of the Plan Administrator’s decision with respect to the claim within 90 days after it is filed. Under special circumstances, the Plan Administrator may require an additional period of not more than 90 days to review the claim. If that happens, the claimant will receive a written notice of that fact, which will also indicate the special circumstances requiring the extension of time and the date by which the Plan Administrator expects to make a determination with respect to the claim. If the extension is required due to the claimant’s failure to submit information necessary to decide the claim, the period for making the determination will be tolled from the date on which the extension notice is sent until the date on which the claimant responds to the Plan Administrator’s request for information.

6.2 Notice of Claim Determination. If a claim is denied in whole or in part, or any adverse benefit determination is made with respect to the claim, the claimant will be provided with a written notice setting forth the reason for the determination, along with specific references to Plan provisions on which the determination is based. This notice will also provide an explanation of what additional information is needed to evaluate the claim (and why such information is necessary), together with an explanation of the Plan's claims review procedure and the time limits applicable to such procedure, as well as a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the determination, the notice will either provide that rule, guideline, protocol or other similar criterion or will contain a statement that it will be provided upon request.

6.3 Claims Appeal Procedure. If the claim has been denied, and the claimant wishes to pursue the claim further, the claimant must request that the Plan Administrator review the denial. The request must be in writing and must be made within 60 days after written notification of denial. In connection with this request, the claimant may review documents pertinent to the claim (other than those that are legally privileged) and may submit to the Plan Administrator written comments, documents, records, and other information related to the claim.

The review by the Plan Administrator will take into account all comments, documents, records, and other information that the claimant submits relating to the claim. The Plan Administrator will make a final written decision on a claim review, in most cases within 60 days after receipt of a request for a review. In some cases, the claim may take more time to review, and an additional processing period of up to 60 days may be required. If that happens, the claimant will receive a written notice of that fact, which will also indicate the special circumstances requiring the extension of time and the date by which the Plan Administrator expects to make a determination with respect to the claim. If the extension is required due to the claimant's failure to submit information necessary to decide the claim, the period for making the determination will be tolled from the date on which the extension notice is sent to the claimant until the date on which the claimant responds to the Plan's request for information.

6.4 Notice of Appeal Determination. The Plan Administrator's decision on the claim for review will be communicated to the claimant in writing. If an adverse benefit determination is made with respect to the claim, the notice will include (i) the specific reason(s) for any adverse benefit determination, with references to the specific Plan provisions on which the determination is based; (ii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to (and copies of) all documents, records and other information relevant to the claim (other than those that are legally privileged); and (iii) a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the determination, the notice will either provide that rule, guideline, protocol or other similar criterion or will contain a statement that it will be provided upon request. The decision of Plan Administrator is final and binding on all parties.

6.5 Requirement to Follow Claims Procedures. If a claimant does not file his or her claim in accordance with the Plan's claim procedures described above, including applicable time limits, the claimant will not be entitled to benefits under this Plan.

6.6 Limitation on Legal Action. No legal action with respect to this Plan may be brought until a claimant has exhausted the claims procedures described above, including the claims appeal procedure. No legal action for coverage or benefits under the Plan may be commenced or maintained more than 2 years after the circumstances giving rise to the claim arose or, if earlier, 1 year after the claims procedures, including the claims appeal procedure, is exhausted.

## **Section 7. Plan Amendment and Termination**

The Company reserves the right to amend or modify the Plan at any time, and in any respect, by action of its duly authorized officer, with or without prior notice to, and effective with respect to, employees who may become eligible to participate in the Plan or become eligible for benefits under the Plan in the case of a reduction in benefits payable under the Plan, or who may otherwise have become eligible to participate in the Plan in the case of an amendment that excludes such employees from eligibility to participate under the Plan. However, no such amendment or termination will be effective to: (i) decrease benefits under the Plan for which an employee has already met all of the eligibility criteria and payment conditions set forth herein or (ii) negatively or adversely impact the rights of the Chief Executive Officer and President hereunder without the written consent of the Chief Executive Officer and President. To the extent that Code Section 409A applies to any payment under this Plan, the Plan shall be terminated in accordance with Treasury Regulation section 1.409A-3(j)(4)(ix).

## **Section 8. Legal Rights Under ERISA**

An employee covered under the Plan is entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). ERISA provides that employees covered under the Plan are entitled to:

### *Receive Information About the Plan and Benefits*

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan, including a copy of the latest annual report (Form 5500 Series), if any, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including copies of the latest annual report (Form 5500 Series), if any, and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.



Receive a summary of the Plan's annual financial report (if any). The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

#### *Prudent Actions by Plan Fiduciaries*

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of the Plan participants and beneficiaries. No one, including the employer or any other person, may fire an employee or otherwise discriminate against an employee in any way to prevent such employee from obtaining a welfare benefit or exercising such employee's rights under ERISA.

#### *Enforcement of Rights*

If a claim for a welfare benefit is denied or ignored, in whole or in part, the claimant has a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps an employee can take to enforce the above rights. For instance, if an employee makes a written request for a copy of Plan documents or the latest annual report from the Plan Administrator and does not receive them within 30 days, the employee may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide materials and pay the employee up to \$110 a day until the employee receives the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

If an employee has a claim for benefits that is denied or ignored, in whole or in part, the employee may file suit in a state or Federal court. If it should happen that Plan fiduciaries misuse the Plan's money or if an employee is discriminated against for asserting his or her rights, such employee may seek assistance from the U.S. Department of Labor, or such employee may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If the employee is successful, the court may order the person sued to pay these costs and fees. If the employee loses, the court may order the employee to pay these costs and fees, for example, if it finds the employee's claim is frivolous.

An employee who has any questions about the Plan should contact the Plan Administrator. An employee who has any questions about this statement or his or her rights under ERISA should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in the telephone directory, or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

## **Section 9. Other Important Information**

9.1 **No Additional Rights Created.** Neither the establishment of this Plan, nor any modification thereof, nor the payment of any benefits hereunder, shall be construed as giving to any individual (or any beneficiary of either), or other person any legal or equitable right against the Company, or any of its affiliates, or any officer, director or employee thereof; and in no event shall the terms and conditions of employment by the Company (or any affiliate) of any individual be modified or in any way affected by this Plan.

9.2 **Records.** The records of the Company with respect to the determination of Eligible Years of Service, employment history, Base Pay, absences, and all other relevant matters shall be conclusive for all purposes of this Plan.

9.3 **Construction.** The Plan is intended to be governed by ERISA. The respective terms and provisions of the Plan shall be construed, whenever possible and for all purposes, to be in conformity with the requirements of ERISA, or any subsequent laws or amendments thereto. To the extent not in conflict with ERISA or the terms of the Plan, the construction and administration of the Plan shall be in accordance with applicable federal law and the laws of the State of California applicable to contracts made and to be performed within the State of California (without application of California conflict of laws provisions). Payments under the Plan are intended to be exempt from Code Section 409A (including the Treasury regulations and other published guidance relating thereto); however, to the extent that Code Section 409A is deemed to apply the provisions of the Plan shall be construed and interpreted to avoid the imputation of any such additional tax, penalty or interest under Code Section 409A yet preserve (to the nearest extent reasonably possible) the intended benefit payable to the participant.

9.4 **Nontransferability of Benefits Rights.** In no event shall the Company make any payment under this Plan to any assignee or creditor of an employee, except as otherwise required by law. Prior to the time of a payment hereunder, an employee shall have no rights by way of anticipation or otherwise to assign or otherwise dispose of any interest under this Plan, nor shall rights be assigned or transferred by operation of law.

9.5 **Plan Interpretation and Benefit Determination.** The Plan is administered and operated by the Plan Administrator, which has complete authority, in such person or entity's sole and absolute discretion, to construe and interpret the terms of the Plan (and any related or underlying documents or policies), and to determine the eligibility for, and amount of, benefits due under the Plan. All such interpretations and determinations of the Plan Administrator shall be final and binding upon all parties and persons affected thereby. The Plan Administrator may appoint one or more individuals and delegate such of its powers and duties with respect to this Plan as it deems desirable to any such individual(s), in which case every reference herein made to the Plan Administrator shall be deemed to mean or include the appointed individual(s) as to matters within their jurisdiction as delegated by the Plan Administrator. The discretion and authority of the Plan Administrator under this Section 9.5 is subject to the notice, claims and appeals procedures set forth in Section 6.

**Section 10. Important Plan Information**

Sponsor's Name and Address:

Nektar Therapeutics  
455 Mission Bay Boulevard South  
San Francisco, CA 94158

Plan Number:

503

Employer Identification Number:

94-3134940

Plan Administrator:

Nektar Therapeutics  
455 Mission Bay Boulevard South  
San Francisco, CA 94158  
Tel: (415) 482-5300

The Plan Administrator has delegated day-to-day administration of the Plan to the following person:  
Vice President, Human Resources

Agent to Receive Process:

Nektar Therapeutics  
455 Mission Bay Boulevard South  
San Francisco, CA 94158  
Attn: General Counsel

Type of Plan:

The Plan is an unfunded employee welfare benefit plan. Benefits under the Plan are paid from the general assets of Nektar Therapeutics. Benefits under the Plan are not insured by the Pension Benefit Guaranty Corporation.

Effective Date:

January 1, 2007

Plan Year:

The calendar year, from January 1 to December 31.

EXHIBIT A

FORM OF SEPARATION AND GENERAL RELEASE AGREEMENT

This Separation and General Release Agreement (this "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_, by and between \_\_\_\_\_, an individual ("Employee"), and Nektar Therapeutics, a Delaware corporation (the "Company").

**WHEREAS**, Employee has been employed by the Company or one of its subsidiaries; and

**WHEREAS**, Employee's employment by the Company or one of its subsidiaries has terminated and, in connection with the Company's Amended and Restated Change in Control Severance Plan (the "Plan"), the Company and Employee desire to enter into this Agreement upon the terms set forth herein;

**NOW, THEREFORE**, in consideration of the covenants undertaken and the releases contained in this Agreement, and in consideration of the Company's (or one of its subsidiaries') obligation to pay severance benefits (conditioned upon this release) under and pursuant to the Plan, Employee and the Company agree as follows:

1. **Separation Date.** Your last day of work is [\_\_\_\_\_, 20\_\_] (the "Separation Date").

2. **Accrued Salary and Paid Time Off.**

(a) **Accrued Salary.** The Company will pay you on the Separation Date all accrued and unpaid salary through the Separation Date subject to applicable payroll deduction and withholding.

(b) **Accrued Paid Time Off.** The Company will pay you any accrued and unused paid time off earned by you through the Separation Date, subject to applicable payroll deduction and withholding. In the event you have negative paid time off balance, such amount will be deducted from your Severance (as defined below) as provided in Section 6(a).

3. **Incentive Compensation.** You will be eligible for payments under the Company's Discretionary Performance-Based Incentive Compensation Policy ("Bonus Plan") if the Company meets its corporate objectives and goals under the Bonus Plan for the six-month performance period that ended on [\_\_\_\_\_, 20\_\_]. Your bonus payment (if any) will be based on the Company's corporate performance percentage rating such six-month performance period and your manager's rating of your individual performance, and will be paid to you at approximately the same time payments are made to the Company's employees under the Bonus Plan for such period. The foregoing payments (if any) are subject to standard payroll deductions and withholdings.

**4. Payment in Full.** You acknowledge and agree that you have received all salary, wages, accrued vacation, bonuses, commissions, expense reimbursements, or other such sums due to you other than the severance benefits to be paid or provided to you pursuant to the Plan. In light of the payment by Company of all wages due, you and the Company further acknowledge and agree that California Labor Code § 206.5 is not applicable. That section provides in pertinent part as follows:

No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an event on wages to be earned, unless payment of such wages has been made.

**5. Non-Disparagement.** Both you and the Company (through its officers and directors) agree not to disparage the other party, and the other party's officers, directors, employees, shareholders and agents, in any manner likely to be harmful to them or their business, business reputation or personal reputation; provided that both you and the Company shall respond accurately and fully to any question, inquiry or request for information when required by legal process.

**6. Confidentiality.** The provisions of this Agreement shall be held in strictest confidence by you and the Company and shall not be publicized or disclosed in any manner whatsoever; provided, however, that: (a) you may disclose this Agreement to your immediate family; (b) the parties may disclose this Agreement in confidence to their respective attorneys, accountants, auditors, tax preparers, and financial advisors; (c) the Company may disclose this Agreement as necessary to fulfill standard or legally required corporate reporting or disclosure requirements; and (d) the parties may disclose this Agreement insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

**7. Expense Reimbursements.** You agree that, within ten (10) business days following the Separation Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Separation Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses pursuant to its regular business practice.

**8. Return of Company Property.** You agree that, on the Separation Date, you shall return to the Company all Company documents (and all copies thereof) and other Company property in your possession or control, including, but not limited to: Company files, email, notes, memoranda, correspondence, agreements, draft documents, notebooks, logs, drawings, records, plans, proposals, reports, forecasts, financial information, sales and marketing information, research and development information, personnel information, specifications, computer-recorded information, tangible property and equipment, cell phones, pagers, PDAs (*e.g.*, Blackberrys), credit cards, entry cards, identification badges and keys; and any materials of any kind that contain or embody any proprietary or confidential information of the Company (and all reproductions thereof in whole or in part). If you have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company confidential or proprietary data, materials or information, you agree to provide the Company with a computer-useable copy of such information and then permanently delete and expunge such Company confidential or proprietary information from those systems; and you agree to provide the Company access to your system as requested to verify that the necessary copying and/or deletion is done. **YOU AGREE NOT TO RETAIN ANY PAPER OR ELECTRONIC COPIES OF ANY COMPANY DOCUMENTS OR DATA (INCLUDING BUT NOT LIMITED TO EMAIL) OTHER THAN THIS AGREEMENT AND OTHER DOCUMENTS EVIDENCING YOUR EMPLOYMENT RELATIONSHIP WITH THE COMPANY. YOU WILL NOT BE ENTITLED TO ANY SEVERANCE BENEFITS UNLESS AND UNTIL YOU COMPLY FULLY WITH THE TERMS SET FORTH IN THIS PARAGRAPH.**

**9. Employment Agreement Continues.** Following the Separation Date, you have continuing obligations under your Employee Agreement with the Company which include, among other obligations, not to use or disclose any confidential or proprietary information of the Company.

**10. Non-Solicitation.** You agree that, for twelve (12) months following the Separation Date, you shall not, directly or indirectly (e.g. through directing a recruiting firm to target Company employees), without prior written consent of the Company, solicit or induce any employee of the Company to leave the employ of the Company.

**11. General Release.** Except as otherwise stated in this Agreement, and in exchange for the consideration given under the Plan, you hereby generally and completely release the Company and its subsidiaries, successors, predecessors and affiliates, and its and their respective partners, members, directors, officers, employees, stockholders, shareholders, agents, attorneys, predecessors, insurers, affiliates and assigns, from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring at any time prior to and including the date you sign this Agreement. This general release includes, but is not limited to:

(a) all claims arising out of or in any way related to your employment with the Company or the termination of that employment;

(b) all claims related to your compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, restricted stock units, or any other ownership interests in the Company;

(c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing;

(d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and

(e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990 (as amended), the federal Age Discrimination in Employment Act (as amended) ("ADEA"), the federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended).

You represent that you have no lawsuits, claims or actions pending in your name, or on behalf of any other person or entity, against the Company or any other person or entity subject to the release granted in this paragraph.

Notwithstanding the release of claims otherwise provided for in this Section of the Agreement, it is expressly understood that nothing in this Agreement will prevent you from filing a charge of discrimination with the Equal Employment Opportunity Commission or any of its state or local deferral agencies, or participating in any investigation by the Equal Employment Opportunity Commission or any of its state or local deferral agencies, although you understand that by signing this Agreement, you waive the right to recover any damages or to receive other relief in any claim or suit brought by or through the Equal Employment Opportunity Commission or any other state or local deferral agency on your behalf. Further, it is expressly understood that nothing in this Agreement shall be construed to be a waiver by you of any benefit that vested in any benefit plan prior to his termination date or as a waiver of his right to continue any benefit in accordance with the terms of a benefit plan. Likewise nothing in this Agreement shall be construed to waive any right that is not subject to waiver by private agreement, including any right that you may have under California Labor Code Section 2802 to indemnification of any expenses or losses incurred in discharging your duties. It is also expressly understood that nothing in this Agreement shall in any way prohibit you from bringing any complaint, claim or action seeking to challenge the validity of this Agreement and/or bringing any complaint claim or action alleging a breach of this Agreement by the Company.

**12. [ADEA Waiver].**<sup>1</sup> You acknowledge that your waiver and release of any rights you may have under ADEA is knowing and voluntary, and that the consideration given under the Plan (severance, COBRA payments, outplacement), in exchange for your general waiver and release, is in addition to anything of value to which you were already entitled. You are hereby advised that:

- (a) your waiver and release do not apply to any rights or claims that may arise after the date you sign this Agreement;
- (b) prior to signing this Agreement you should consult with an attorney (although you may choose voluntarily not to do so);
- (c) you have [twenty-one (21)/forty-five (45)] days to consider this Agreement (although you may choose voluntarily to sign it earlier);
- (d) you have seven (7) days following the date you sign this Agreement to revoke it by providing written notice to the Company's General Counsel;
- (e) this Agreement shall not be effective until the revocation period expires which will be the eighth day after you sign this Agreement;

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<sup>1</sup> Section 12 will be included if the Employee is age 40 or older as of the date that the Employee's employment with the Company terminates or in such other circumstances (if any) as the Employee may have claims under the ADEA. In the event Section 12 is included, whether the Employee has 21 days, 45 days, or some other period in which to consider the Release Agreement will be determined with reference to the requirements of the ADEA in order for such waiver to be valid in the circumstances. The determinations referred to in the preceding two sentences shall be made by the Company in its sole discretion.

(f) nothing in this Agreement prevents or precludes you from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law; and

(g) in order to revoke this Agreement, you must deliver to Gil M. Labrucherie's attention at the following address a written revocation before 12:00 a.m. (midnight) Pacific Time on the seventh calendar day following the date you sign the Agreement:

Gil M. Labrucherie  
General Counsel  
Nektar Therapeutics  
455 Mission Bay Boulevard South

San Francisco, CA 94158

(415) 482-5300

**13. Waiver of Unknown Claims.** You further agree and acknowledge that the release provided for in this Agreement shall apply to all unknown and unanticipated injuries and/or damages. You acknowledge and understand that Section 1542 of the Civil Code of the State of California provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.

Being aware of Section 1542 of the California Civil Code, you by signing this Agreement expressly waive the provision of Section 1542 of the California Civil Code and any similar provisions of law that may be applicable.

**14. Entire Agreement; Modification.** This Agreement, together with the Plan and your Employee Agreement, constitute the complete and only agreement between you and the Company on these subjects. You are agreeing to it without reliance on any promise or representation, written or oral, other than those expressly contained in this Agreement, and it supersedes any other such promises, warranties or representations. This Agreement may not be modified except in a writing signed by both you and the Company's Vice President, Human Resources. This Agreement shall bind the heirs, personal representatives, successors and assigns of both you and the Company, and inure to the benefit of both you and the Company, their heirs, successors and assigns. Any determination that a provision of this Agreement is invalid or unenforceable, in whole or in part, will not affect any other provision of this Agreement, and the provision in question shall be modified by the court so as to be rendered enforceable in accordance with the intent of the parties to the extent possible.



If this Agreement is acceptable to you, please sign below and return the original to Human Resources on or before \_\_\_\_\_, 201\_. You will not be entitled to any severance benefits under the Plan if we do not receive the fully executed Agreement from you by the aforementioned date and you do not revoke this Agreement within any revocation period provided under applicable law.

**NEKTAR THERAPEUTICS**

By: \_\_\_\_\_  
**DORIAN RINELLA**  
**SVP, HUMAN RESOURCES**

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

**[EMPLOYEE NAME]**  
\_\_\_\_\_

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