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

**FORM S-8
REGISTRATION STATEMENT**
*Under
The Securities Act of 1933*

SURGALIGN HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

83-2540607
(I.R.S. Employer Identification No.)

**520 Lake Cook Road
Suite 315
Deerfield, Illinois**
(Address of Principal Executive Offices)

60015
(Zip Code)

**SURGALIGN HOLDINGS, INC.
EMPLOYEE STOCK PURCHASE PLAN**
(Full Title of the Plan)

Jonathon M. Singer
Chief Financial and Operating Officer
Surgalign Holdings, Inc.
520 Lake Cook Road, Suite 315
Deerfield, Illinois 60015
(Name and address of agent for service)

(224) 303-4651
(Telephone number, including area code, of agent for service)

Copies of all communications to:

Robert J. Grammig, Esq.
Holland & Knight LLP
100 North Tampa Street, Suite 4100
Tampa, Florida 33602
Phone: (813) 227-8500
Fax: (813) 229-0134

Joshua H. DeRienzi
Chief Legal Officer and Corporate Secretary
Surgalign Holdings, Inc.
520 Lake Cook Road, Suite 315
Deerfield, Illinois 60015
Phone: (224) 303-4651

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

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

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered(1)	Proposed maximum aggregate offering price(2)	Proposed maximum offering price per share(2)	Amount of registration fee(2)
Common Stock, \$0.001 par value ("Common Stock"):	5,000,000	\$8,900,000	\$1.78	\$970.99

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such additional and indeterminate number of shares as may become issuable pursuant to the provisions of the Plan relating to adjustments for change resulting from a stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) under the Securities Act. The fee is calculated upon the basis of the average between the high and low sales prices for shares of common stock of the Registrant as reported on the Nasdaq Stock Market on May 3, 2021.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

In accordance with the rules and regulations of the Securities and Exchange Commission (the “SEC”), the documents containing the information called for in Part I of Form S-8 will be sent or given to individuals who participate in the Surgalign Holdings, Inc. Employee Stock Purchase Plan adopted by Surgalign Holdings, Inc. (the “Company” or the “Registrant”) and are not being filed with or included in this Form S-8.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents filed with the SEC by the Registrant are incorporated by reference in this Registration Statement:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the year ended December 31, 2020, filed with the SEC on March 16, 2021 (including information specifically incorporated by reference into the Registrant’s Form 10-K from the Registrant’s [Definitive Proxy Statement for the 2021 Annual Meeting of Stockholders](#));
- (b) The Registrant’s Current Reports on Form 8-K filed with the SEC on: [February 12, 2021](#); [March 12, 2021](#); [March 18, 2021](#); [April 8, 2021](#); [April 23, 2021](#); and [May 5, 2021](#);
- (c) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year ended December 31, 2020; and
- (d) The description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 8-A, dated August 7, 2000, filed pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as modified by the description of the Registrant’s Common Stock contained in [Exhibit 4.4](#) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the SEC on June 8, 2020.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date of this Registration Statement or prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

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

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 of the Delaware General Corporation Law (“DGCL”) authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the DGCL are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the DGCL, our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws contain provisions that limit the liability of its directors for monetary damages to the fullest extent permitted by the DGCL. Consequently, the Registrant’s directors will not be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- for any breach of the director’s duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- in respect of unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL;
- for any transaction from which the director derives any improper personal benefit.

Our Amended and Restated Certificate of Incorporation also provides that if the DGCL is amended after the approval by our stockholders of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by the DGCL.

Our Amended and Restated Bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by the DGCL, against all expenses and liabilities reasonably incurred in connection with their service for or on our behalf. Our Amended and Restated Bylaws provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding, and permit us to secure insurance on behalf of any director, officer, employee, or other enterprise agent for any liability arising out of his or her action in that capacity, whether or not the DGCL would otherwise permit indemnification.

Further, as permitted by the DGCL, the Registrant has entered into separate indemnification agreements with its current directors and executive officers and insures its directors and officers against losses arising from any claim against them as such for wrongful acts or omission, subject to certain limitations.

We currently carry and intend to continue to carry liability insurance for our directors and officers.

The general effect of the above provisions may be to reduce the circumstances in which an officer or director may be required to bear the economic burden of the above liabilities and expense.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The Exhibits required to be filed as part of this Registration Statement are listed in the attached Exhibit Index.

ITEM 9. UNDERTAKINGS.

(a) The Registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions (see Item 6) or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of

any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant, Surgalign Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on May 7, 2021.

SURGALIGN HOLDINGS, INC.

By: /s/ Terry M. Rich
Terry M. Rich
President and Chief Executive Officer

POWER OF ATTORNEY

KNOWN TO ALL PERSONS BY THESE PRESENTS, we, the undersigned officers and directors of Surgalign Holdings, Inc., hereby severally constitute and appoint Terry M. Rich and Jonathon M. Singer, each acting alone as an attorney-in-fact with the full power of substitution, for and in the name, place and stead of each of us in any and all capacities, to sign any and all amendments to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact, or either of their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Terry M. Rich</u> Terry M. Rich	President and Chief Executive Officer (Principal Executive Officer) and Director	May 7, 2021
<u>/s/ Jonathon M. Singer</u> Jonathon M. Singer	Chief Financial and Operating Officer (Principal Financial Officer) and Director	May 7, 2021
<u>/s/ Ryan M. Bartolucci</u> Ryan M. Bartolucci	Vice President and Chief Accounting Officer (Principal Accounting Officer)	May 7, 2021
<u>/s/ Stuart F. Simpson</u> Stuart F. Simpson	Chairman	May 7, 2021
<u>/s/ Sheryl L. Conley</u> Sheryl L. Conley	Director	May 7, 2021
<u>/s/ Pawel Lewicki</u> Pawel Lewicki	Director	May 7, 2021
<u>/s/ Jeffrey C. Lightcap</u> Jeffrey C. Lightcap	Director	May 7, 2021
<u>/s/ Thomas A. McEachin</u> Thomas A. McEachin	Director	May 7, 2021
<u>/s/ Mark D. Stolper</u> Mark D. Stolper	Director	May 7, 2021
<u>/s/ Paul G. Thomas</u> Paul G. Thomas	Director	May 7, 2021
<u>/s/ Nicholas J. Valeriani</u> Nicholas J. Valeriani	Director	May 7, 2021

INDEX OF EXHIBITS

- 5.1 [Opinion of Holland & Knight LLP regarding legality of the Common Stock.](#)
- 23.1 [Consent of Holland & Knight LLP \(included in Exhibit 5.1\).](#)
- 23.2 [Consent of Deloitte & Touche LLP.](#)
- 24.1 [Powers of Attorney \(included on signature page\).](#)
- 99.1 [Surgalign Holdings, Inc. Employee Stock Purchase Plan.](#)

Opinion of Holland & Knight LLP regarding legality of the Common Stock

Holland & Knight

100 North Tampa Street, Suite 4100 | Tampa, Florida 33602 | T 813.227.8500 | F 813.229.0134
Holland & Knight LLP | www.hklaw.com

May 7, 2021

Surgalign Holdings, Inc.
520 Lake Cook Road
Suite 315
Deerfield, Illinois 60015

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We refer to the Registration Statement (the "Registration Statement") on Form S-8 filed today by Surgalign Holdings, Inc. (the "Company") with the Securities and Exchange Commission, for the purpose of registering under the Securities Act of 1933, as amended (the "Act"), an aggregate of 5,000,000 shares (the "Shares") of the authorized common stock, par value \$0.001 per share, of the Company being offered to certain employees, consultants, officers and directors of the Company pursuant to the Surgalign Holdings, Inc. Employee Stock Purchase Plan (the "Plan").

In rendering the opinion set forth below, we have acted as counsel for the Company and have examined originals, or copies certified to our satisfaction, of: (i) the Registration Statement; (ii) the Articles of Incorporation of the Company, as amended to date and currently in effect; (iii) the Bylaws of the Company, as amended to date and currently in effect; (iv) the Plan; (v) certain resolutions of the Board of Directors of the Company in connection with the Registration Statement; and (vi) certain resolutions adopted in connection with the Company's annual meeting of shareholders. We also examined originals, or copies certified to our satisfaction, of such corporate records of the Company, certificates of public officials, and representatives of the Company, and other documents as we deemed necessary to deliver the opinion expressed below.

In such examination, we have assumed, without inquiry or other investigation: (i) the authenticity and completeness of all documents submitted to us as original documents; (ii) the genuineness of all signatures; (iii) the conformity to the authentic originals of all documents submitted to us as copies; (iv) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates of public officials and representatives of the Company that we have reviewed as to certain factual matters material to this opinion; (v) that there has been no undisclosed waiver of any right, remedy or provision contained in any such documents; (vi) that each certificate or copy of a public record furnished by public officials is authentic, accurate and complete; and (vii) that each transaction complies with all tests of good faith, fairness and conscionability required by law.

Based upon the foregoing, and having regard for legal considerations that we deem relevant, it is our opinion that subsequent to the Registration Statement becoming effective under the Act, the Shares, when issued and paid for in accordance with the terms of the Plan, will be duly authorized, validly issued, fully paid and non-assessable.

This opinion speaks only as of its date. We undertake no obligation to advise the addressees (or any other third party) of changes in law or fact that occur after the date of this opinion, even though the change may affect the legal analysis, a legal conclusion or an informational confirmation in this opinion.

We express no opinion herein as to matters involving the laws of any jurisdiction other than the General Corporation Law of Delaware and the federal laws of the United States of America.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement.

Very truly yours,

/s/ HOLLAND & KNIGHT LLP

Consent of Deloitte & Touche LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated March 16, 2021 relating to the financial statements of Surgalign Holdings, Inc. and the effectiveness of Surgalign Holdings, Inc.'s internal control over financial reporting, appearing in the Annual Report on Form 10-K of Surgalign Holdings, Inc. for the year ended December 31, 2020.

/s/ DELOITTE & TOUCHE LLP

Chicago, IL
May 7, 2021

Surgalign Holdings, Inc. Employee Stock Purchase Plan

SURGALIGN HOLDINGS, INC.
EMPLOYEE STOCK PURCHASE PLAN

1. **Purpose.** The purpose of the Plan is to provide Employees with opportunities to purchase common stock of the Company at a discounted purchase price, thereby encouraging increased efforts to promote the interests of the Company and its stockholders. It is the intention of the Company to have the Plan qualify as an “Employee Stock Purchase Plan” under Section 423 of the Code with respect to Section 423 Offerings. Accordingly, the provisions of the Plan shall be construed so as to extend and limit participation in Section 423 Offerings in a manner consistent with the requirements of Section 423 of the Code. The Plan shall apply to Offering Periods beginning on or after June 30, 2021.

2. **Definitions.**
 - (a) *Board* means the Board of Directors of the Company.
 - (b) *Brokerage Account* means the account in which the Purchased Shares are held.
 - (c) *Business Day* means a day on which NASDAQ is open for trading.
 - (d) *Code* means the Internal Revenue Code of 1986, as amended.
 - (e) *Committee* means the Compensation Committee of the Board or the designee of the Compensation Committee.
 - (f) *Company* means Surgalign Holdings, Inc., a Delaware corporation.
 - (g) *Compensation* means a Participant’s base salary or wages, overtime pay, commissions, cash bonuses, and vacation, holiday, and sick pay. Compensation does not include any other forms of compensation, such as income related to stock option awards, stock grants, and other equity incentive awards, expense reimbursements, relocation-related payments, employee benefit plan payments, death benefits, income from non-cash and fringe benefits, and severance.
 - (h) *Employee* means any individual who is a common law employee of the Company or any Participating Subsidiary whose customary employment with such entity is for (i) at least 30 hours per week and (ii) more than 5 months per calendar year. Employment shall be treated as continuing while the individual is on sick leave or other leave of absence approved by the Company or the Participating Subsidiary, as appropriate, and in the case of a Section 423 Offering, only to the extent permitted under Section 423 of the Code. For purposes of the Plan, an individual who performs services for the Company or a Participating Subsidiary pursuant to an agreement that classifies such individual’s relationship with the Company or a Participating Subsidiary as other than a common law employee shall not be considered an “employee” with respect to any period preceding the date on which a court or administrative agency issues a final determination that such individual is an “employee.”
 - (i) *Enrollment Date* means the first Business Day of each Offering Period.
 - (j) *Exchange Act* means the Securities Exchange Act of 1934, as amended.
 - (k) *Exercise Date* means the last Business Day of each Offering Period.
 - (l) *Fair Market Value* as of any date means the “NASDAQ Official Closing Price” (as defined on www.nasdaq.com) for a Share (or a substantially similar successor price) as reported on

www.nasdaq.com (or a substantially similar successor website) on the relevant valuation date. If no NASDAQ Official Closing Price is reported on such date, Fair Market Value as of such date shall be the NASDAQ Official Closing Price on the previous date on which such price was reported. If the Shares are no longer listed on NASDAQ, the closing price for Shares shall be as reported on the official website for another exchange on which the Shares are listed.

- (m) *NASDAQ* means the Nasdaq Global Select Market.
- (n) *Non-Section 423 Offering* means an Offering that is not intended to qualify under Section 423 of the Code.
- (o) *Offering* means an offer of an Option under the Plan that may be exercised on the Exercise Date of an Offering Period. Unless otherwise specified by the Committee, each such offer shall be deemed a separate Offering, even if the dates and other terms of the separate Offerings are identical, and the provisions of the Plan shall separately apply to each Offering. To the extent permitted by Section 423 of the Code, the terms of each separate Section 423 Offering need not be identical, provided that the terms of the Plan and an Offering together satisfy Section 423 of the Code. The terms of each separate Non-Section 423 Offering need not be identical in any case.
- (p) *Offering Period* means every six-month period beginning each January 1st and July 1st or any other period designated by the Committee that does not exceed 27 months. The first Offering Period under the Plan shall commence on July 1, 2021.
- (q) *Option* means an option granted under the Plan that entitles a Participant to purchase Shares.
- (r) *Participant* means an Employee who satisfies the requirements of Sections 3 and 5 of the Plan.
- (s) *Participating Subsidiary* means each Subsidiary that is listed on Schedule A hereto and each other Subsidiary designated by the Board or the Committee from time to time as a Participating Subsidiary.
- (t) *Plan* means this Suralign Holdings, Inc. Employee Stock Purchase Plan.
- (u) *Purchase Account* means the account used to purchase Shares through the exercise of Options under the Plan.
- (v) *Purchase Price* means the lesser of (A) 85% of the Fair Market Value of a Share on the Enrollment Date and (B) 85% of the Fair Market Value of a Share on the Exercise Date unless the Committee communicates a different per share Purchase Price to Participants prior to the beginning of the Offering Period that is no less than the lesser of (A) 85% of the Fair Market Value of a Share on the Enrollment Date and (B) 85% of the Fair Market Value of a Share on the Exercise Date.
- (w) *Purchased Shares* means the full Shares issued or delivered pursuant to the exercise of Options under the Plan.
- (x) *Section 423 Offering* means an Offering that is intended to qualify under Section 423 of the Code.
- (y) *Securities Act* means the Securities Act of 1933, as amended.
- (z) *Shares* means the common stock, par value \$0.01 per share, of the Company.
- (aa) *Subsidiary* means an entity, domestic or foreign, of which not less than 50% of the voting equity is held by the Company or a Subsidiary, whether or not such entity now exists or is hereafter

organized or acquired by the Company or a Subsidiary, provided that such entity is also a “subsidiary” within the meaning of Section 424 of the Code.

- (bb) *Termination Date* means the date on which a Participant terminates employment or on which the Participant ceases to provide services to the Company or a Subsidiary as an employee for any reason.

3. Eligibility.

- (a) Only Employees shall be eligible to be granted Options, and in no event may a Participant be granted an Option following the Participant’s Termination Date.
- (b) Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an Option if (A) immediately after the grant, the Employee (or any other person whose stock would be attributed to the Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or hold outstanding Options or options to purchase stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or any of its Subsidiaries, or (B) the Option would permit the Employee to purchase stock under all employee stock purchase plans (described in Section 423 of the Code) of the Company and its Subsidiaries to accrue at a rate that exceeds \$25,000 of the Fair Market Value of such stock (determined at the time the Option is granted) for each calendar year in which the Option is outstanding at any time. For purposes of applying the limit described in clause (B) above to a Participant in a Non-Section 423 Offering who is employed outside of the U.S., the exchange rate shall be determined on the last day of the applicable Offering Period.

- 4. Option Exercise.** Options shall be exercised on behalf of Participants in the Plan every Exercise Date, using payroll deductions that have accumulated in the Participants’ Purchase Accounts during the immediately preceding Offering Period or that have been retained from a prior Offering Period pursuant to Section 8 of the Plan.

5. Participation.

- (a) An Employee shall be eligible to participate on the first Enrollment Date after the Employee’s first date of employment with the Company or a Participating Subsidiary by properly completing and submitting an election form by the deadline prescribed by the Company. Participation in the Plan is voluntary.
- (b) An Employee who does not become a Participant on the first Enrollment Date on which the Employee is eligible may thereafter become a Participant on any subsequent Enrollment Date by properly completing and submitting an election form by the deadline prescribed by the Company.
- (c) Payroll deductions for a Participant shall commence on the first payroll date following the Enrollment Date and shall end on the last payroll date in the Offering Period, unless sooner terminated as provided in Section 12 or Section 13 of the Plan.

6. Payroll Deductions.

- (a) A Participant may elect to have payroll deductions made during an Offering Period equal to no less than 1% of the Participant's Compensation, up to a maximum of 15% (or any greater amount established by the Committee). The amount of such payroll deductions shall be in whole percentages. All payroll deductions made by a Participant shall be credited to the Participant's Purchase Account. A Participant may not make any additional payments into the Participant's Purchase Account. All such payroll deductions shall be made from the Participant's Compensation after deduction of any tax, social security, and national insurance contributions.
- (b) A Participant may not increase or decrease the rate of payroll deductions during an Offering Period. A Participant may change the Participant's payroll deduction percentage under subsection (a) above for any subsequent Offering Period by properly completing and submitting an election change form in accordance with the procedures prescribed by the Committee. The change in amount shall be effective as of the first Enrollment Date following the date of filing of the election change form.
- (c) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) of the Plan, a Participant's payroll deductions may be decreased to 0% at any time during an Offering Period. Payroll deductions shall recommence at the rate provided in the Participant's election form at the beginning of the first Offering Period that is scheduled to end in the following calendar year, unless terminated by the Participant as provided in Section 12 of the Plan.

7. Grant of Option. On the applicable Enrollment Date, each Participant in an Offering Period shall be granted an Option to purchase, on the following Exercise Date, a number of full Shares determined by dividing (a) the Participant's payroll deductions accumulated prior to the Exercise Date and retained in the Participant's Purchase Account as of the Exercise Date by (b) the applicable Purchase Price.

8. Exercise of Option. A Participant's Option shall be exercised automatically on the Exercise Date, and the maximum number of Shares subject to the Option shall be purchased for the Participant at the applicable Purchase Price with the accumulated payroll deductions in the Participant's Purchase Account. No fractional Shares shall be purchased; any payroll deductions accumulated in a Participant's Purchase Account that are not sufficient to purchase a full Share shall be retained in the Purchase Account for the next subsequent Offering Period, subject to earlier withdrawal by the Participant as provided in Section 12 of the Plan. All other payroll deductions accumulated in a Participant's Purchase Account and not used to purchase Shares on an Exercise Date shall be distributed to the Participant. During a Participant's lifetime, a Participant's Option is exercisable only by the Participant. The Company shall satisfy the exercise of all Participants' Options for the purchase of Shares through (a) the issuance of authorized but unissued Shares, (b) the transfer of treasury Shares, (c) the purchase of Shares on behalf of the applicable Participants on the open market through an independent broker, or (d) a combination of the foregoing.

9. Issuance of Stock. The Shares purchased by a Participant shall be issued in book entry form and shall be considered to be issued and outstanding to the Participant's credit as of the end of the last day of each Offering Period. The Committee may permit or require that shares be deposited directly in a Brokerage Account with one or more brokers designated by the Committee or to one or more designated agents of the Company, and the Committee may use electronic or automated methods of share transfer. The Committee may require that Shares be retained with such brokers or agents for a designated period of time and may establish other procedures to permit tracking of disqualifying dispositions of such Shares. The Committee may also impose a transaction fee with respect to a sale of Shares issued to a Participant's credit and held by such a broker or agent. The Committee may permit Shares purchased under the Plan to participate in a dividend reinvestment plan or program maintained by the Company, and the Committee may establish a default method for the payment of dividends.

10. Approval by Stockholders. Notwithstanding the above, the Plan was expressly made subject to the approval of the stockholders of the Company within 12 months before or after the date the Plan was

adopted by the Board, and such stockholder approval was obtained in the manner and to the degree required under applicable federal and state law.

11. Administration.

- (a) *Powers and Duties of the Committee.* The Plan shall be administered by the Committee. Subject to the provisions of the Plan and Section 423 of the Code and the regulations thereunder, the Committee shall have the discretionary authority to determine the time and frequency of granting Options, the terms and conditions of the Options, and the number of Shares subject to each Option. The Committee also shall have the discretionary authority to do everything necessary and appropriate to administer the Plan, including by interpreting the provisions of the Plan (consistent with the provisions of Section 423 of the Code). The Committee may delegate its duties and authority to any of the Company's officers or employees as it determines to be appropriate. All actions, decisions, determinations, and interpretations by the Committee or its delegate with respect to the Plan shall be final and binding upon all Participants and upon their executors, administrators, personal representatives, heirs, and legatees. No member of the Board or the Committee, and no officer or director to whom the Committee has delegated its duties and authority, shall be liable for any action, decision, determination, or interpretation made in good faith with respect to the Plan or any Option. Each Section 423 Offering shall be administered so as to ensure that all Participants have the same rights and privileges provided by Section 423(b)(5) of the Code.
- (b) *Brokerage Firm or Financial Institution.* The Company, the Board, or the Committee may engage the services of a brokerage firm or financial institution to perform certain ministerial and procedural duties under the Plan. Such duties may include mailing and receiving notices contemplated under the Plan, determining the number of Purchased Shares for each Participant, maintaining or causing to be maintained the Purchase Account and the Brokerage Account, disbursing funds maintained in the Purchase Account or proceeds from the sale of Shares through the Brokerage Account, and filing proper tax returns and forms (including information returns) with the appropriate tax authorities and providing to each Participant statements as required by law or regulation.
- (c) *Indemnification.* Each person who is or has been (A) a member of the Board, (B) a member of the Committee, or (C) an officer or employee of the Company to whom authority was delegated in relation to the Plan shall be indemnified and held harmless by the Company against and from all (x) losses, costs, liabilities, and expenses that may be imposed upon or reasonably incurred by such person in connection with or resulting from any claim, suit, proceeding, or other action to which such person may be a party or in which such person may be involved by reason of any action taken or failure to act under the Plan (any "Action") and (y) amounts paid by such person in settlement of any Action, with the Company's approval, or paid by such person in satisfaction of any judgment in any Action, provided that in any case such person gives the Company an opportunity, at its own expense, to handle and defend the Action before such person undertakes to handle and defend the Action on such person's own behalf, unless such loss, cost, liability or expense is a result of such person's own willful misconduct or except as expressly provided by statute.

The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's certificate of incorporation or bylaws, any contract with the Company, as a matter of law, or otherwise, or of any power that the Company may have to indemnify them or hold them harmless.

- 12. Withdrawal.** A Participant may withdraw from the Plan by properly completing and submitting to the Company a withdrawal form in accordance with the procedures prescribed by the Committee, which must be submitted prior to the date specified by the Committee before the last day of the applicable Offering Period. Upon withdrawal, any payroll deductions credited to the Participant's Purchase Account prior to the effective date of the Participant's withdrawal from the Plan shall be returned to the Participant. No further payroll deductions for the purchase of Shares shall be made during subsequent Offering Periods, unless the

Participant properly completes and submits an election form by the deadline prescribed by the Company. A Participant's withdrawal from an offering shall not have any effect upon the Participant's eligibility to participate in the Plan or in any similar plan that may hereafter be adopted by the Company.

- 13. Termination of Employment.** On a Participant's Termination Date occurring prior to an Exercise Date, the corresponding payroll deductions credited to the Participant's Purchase Account shall be returned to the Participant or, in the case of the Participant's death, to the person or persons entitled to such credited payroll deductions under Section 16, and the Participant's Option shall be automatically terminated.
- 14. Interest.** No interest shall accrue on the payroll deductions of a Participant in the Plan.
- 15. Stock.**
 - (a) The stock subject to Options shall be Shares as traded on the NASDAQ or on any other exchange that the Shares may be listed.
 - (b) Subject to adjustment upon changes in capitalization of the Company as provided in Section 18 of the Plan, the maximum number of Shares available for sale under the Plan shall be 5,000,000 Shares. On a given Exercise Date, if the number of Shares with respect to which Options are to be exercised exceeds the number of Shares then available under the Plan, the Committee shall make a pro rata allocation of the Shares remaining available for purchase in as uniform a manner as practicable and as the Committee determines to be equitable.
 - (c) A Participant shall have no interest or voting right in Shares covered by the Participant's Option until the Option is exercised and the Participant becomes a holder of record of Shares acquired pursuant to such exercise.
- 16. Designation of Beneficiary.** To the extent permitted by applicable law, the Committee may permit Participants to designate beneficiaries to receive any Purchased Shares or payroll deductions in the Participant's Purchase Account in the event of the Participant's death. Beneficiary designations shall be made in accordance with procedures prescribed by the Committee. If no properly designated beneficiary survives the Participant, the Purchased Shares and payroll deductions shall be distributed to the Participant's estate.
- 17. Assignability of Options.** Neither payroll deductions credited to a Participant's Purchase Account nor any rights with regard to the exercise of an Option or to receive Shares under the Plan may be assigned, transferred, pledged, or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 16 of the Plan) by the Participant. Any such attempt at assignment, transfer, pledge, or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw from an Offering Period in accordance with Section 12 of the Plan.
- 18. Adjustment of Number of Shares Subject to Options.**
 - (a) *Adjustment.* Subject to any required action by the stockholders of the Company, the maximum number of securities available for purchase under the Plan, as well as the price per security and the number of securities covered by each Option that has not yet been exercised shall be appropriately adjusted in the event of any a stock split, reverse stock split, stock dividend, combination, or reclassification of the Shares, or any other increase or decrease in the number of Shares effected without receipt of consideration by the Company, excluding the conversion of any convertible securities of the Company. Such adjustment shall be made by the Board or the Committee, whose determination shall be final, binding, and conclusive. If any such adjustment would result in a fractional security being available under the Plan, such fractional security shall be disregarded. Except as expressly provided in this Section 18(a), no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject

to an Option. The Options granted pursuant to a Section 423 Offering shall not be adjusted in a manner that causes the Options to fail to qualify as options issued pursuant to an "employee stock purchase plan" within the meaning of Section 423 of the Code.

- (b) *Dissolution or Liquidation.* In the event of the proposed dissolution or liquidation of the Company, the Offering Period then in progress shall terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Board, and the Board may either provide for the purchase of Shares as of the date on which such Offering Period terminates or return to each Participant the payroll deductions credited to the Participant's Purchase Account.
- (c) *Merger or Asset Sale.* In the event of a proposed sale of all or substantially all of the assets of the Company, or the merger of the Company with or into another corporation, each outstanding Option shall be assumed or an equivalent option substituted by the successor corporation or a parent or subsidiary of the successor corporation, unless the Board determines, in the exercise of its sole discretion, that in lieu of such assumption or substitution to either terminate all outstanding Options and return to each Participant the payroll deductions credited to such Participant's Purchase Account or to provide for the Offering Period in progress to end on a date prior to the consummation of such sale or merger.

19. Amendments to and Termination of the Plan.

- (a) The Board or the Committee may at any time and for any reason amend, modify, suspend, discontinue, or terminate the Plan without notice, provided that no Participant's existing rights with respect to existing Options are adversely affected. To the extent necessary to comply with Section 423 of the Code (or any other applicable law, regulation, or stock exchange rule), the Company shall obtain stockholder approval in any manner and to any degree required.
- (b) Without stockholder consent and without regard to whether any Participant's rights may be considered to have been "adversely affected," the Board or the Committee may (A) change the Purchase Price or Offering Periods, (B) limit or increase the frequency or number of changes in the amount withheld during an Offering Period, (C) establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, (D) permit payroll withholding in an amount less or greater than the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, (E) establish reasonable waiting and adjustment periods or accounting and crediting procedures to ensure that amounts applied toward the purchase of Shares for each Participant properly correspond with amounts withheld from the Participant's Compensation, (F) and establish other limitations or procedures that the Board or the Committee determines in its sole discretion advisable and consistent with the Plan, except that changes to (1) the Purchase Price, (2) the Offering Period, (3) the maximum percentage of Compensation that may be deducted pursuant to Section 6(a) of the Plan, or (4) the maximum number of Shares that may be purchased in an Offering Period shall not be effective until communicated to Participants in a reasonable manner, with the determination of such reasonable manner in the sole discretion of the Board or the Committee.

20. No Other Obligations. The receipt of an Option shall not impose any obligation upon a Participant to purchase any Shares covered by the Option. The granting of an Option shall not constitute an agreement or an understanding, express or implied, on the part of the Company to employ the Participant for any specified period.

21. Notices and Communication. Any notice or other form of communication that the Company or a Participant may be required or permitted to give to the other shall be provided through means designated by the Committee, which may be through any paper or electronic method.

22. Conditions for Exercise and Issuance.

- (a) Shares shall not be issued with respect to an Option unless the exercise of such Option and the issuance and delivery of such Shares pursuant thereto would comply with all applicable law, domestic or foreign, including the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the Shares are then listed. Issuance of Shares with respect to an Option shall be subject to the approval of the Company's counsel with respect to such compliance.
- (b) As a condition to the exercise of an Option, the Company may require the person exercising the Option to represent and warrant, at the time of any such exercise, that the Shares are being purchased only for investment and without any present intention to sell or distribute the Shares if, in the opinion of the Company's counsel, such a representation is required by applicable law as described in subsection (a) above.

23. General Compliance. The Plan shall be administered and Options exercised in compliance with the Securities Act, Exchange Act, and all other applicable securities laws and Company policies, including any insider trading policy of the Company.

24. Term of the Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board and its approval by the stockholders of the Company and shall continue in effect until terminated pursuant to Section 19 of the Plan.

25. Governing Law. The Plan and all Options shall be construed in accordance with and governed by the laws of the state of Delaware, without reference to choice-of-law principles and subject in all cases to the Code and regulations thereunder.

26. Non-U.S. Participants. To the extent permitted under Section 423 of the Code, without the amendment of the Plan, the Company may provide for the participation in the Plan by Employees who are subject to the laws of foreign countries or jurisdictions on terms and conditions different from those specified in the Plan, as in the judgment of the Company may be necessary or desirable to foster and promote achievement of the purposes of the Plan. In furtherance of such purposes, the Company may make modifications or establish procedures or subplans and the like as necessary or advisable to comply with provisions of laws of other countries or jurisdictions in which the Company or the Participating Subsidiaries operate or have employees. Each subplan shall constitute a separate "offering" under the Plan in accordance with Treas. Reg. §1.423-2(a).

Schedule A

Participating Subsidiaries

1.