

**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): December 14, 2023

bluebird bio, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-35966
(Commission
File Number)

13-3680878
(IRS Employer
Identification No.)

**455 Grand Union Boulevard,
Somerville, MA**
(Address of Principal Executive Offices)

02145
(Zip Code)

(339) 499-9300
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

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 (see General Instructions A.2. below):

- 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))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 par value per share	BLUE	The Nasdaq Stock Market LLC

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

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On December 14, 2023, bluebird bio, Inc. (the “Company”) entered into an accounts receivable factoring agreement (the “Agreement”) with Alterna Capital Solutions LLC (the “Buyer”). Pursuant to the Agreement, the Company has agreed to sell certain trade accounts receivable (the “Purchased Accounts”) to the Buyer from time to time. Currently, the Company invoices for its products (LYFGENIA, ZYNTEGLO and SKYSONA) when drug product is delivered to the qualified treatment center. The Agreement will enable the Company to collect cash earlier as part of this process.

The factoring facility provides for the Company to have access to up to \$100,000,000.00 (the “Maximum Credit”) on a revolving basis, measured by the outstanding balance of Purchased Accounts from time to time. Upon receipt of the upfront purchase price for any Purchased Accounts, the Company will have sold and assigned all of its rights in such Purchased Accounts and all proceeds thereof. The upfront purchase price for a Purchased Account is 90% of the face amount thereof and the remaining 10% is payable only if and when the Buyer receives payment from the related account debtor. The proceeds from the Agreement will be used to fund general working capital needs.

In connection with the factoring facility, the Company will be charged a fee, defined as a floating rate per annum on the outstanding purchase price funded by the Buyer under the Agreement, equal to the prime rate plus 1.35%. The Company will also be charged a factoring fee of 0.05% of the gross face value of the Purchased Account, payable from the date of purchase until the contractual due date of such Purchased Account. Buyer has the right to require the Company to repurchase any Purchased Account that was ineligible as of the date of purchase or with respect to which any account debtor asserts a dispute that is not resolved by the related due date. The Buyer does not have recourse to the Company for the insolvency or other credit risk of the account debtors.

The factoring facility is for an initial term of 12 months and will renew on a year to year basis thereafter, unless terminated in accordance with the Agreement. The Company may terminate the facility at any time upon 60 days prior written notice and payment to Buyer of an early termination fee equal to 2% of the Maximum Credit if terminated during the first 12 months and 0.75% of the Maximum Credit during the subsequent terms.

The Company has granted the Buyer a security interest in the Purchased Accounts, and proceeds thereof, as more fully described in the Agreement, in order to perfect the Buyer’s ownership interest in the Purchased Accounts and secure the payment and performance of all obligations of the Company to the Buyer under the Agreement. The Agreement also provides for customary provisions, including representations, warranties and covenants, indemnification, waiver of jury trial, arbitration, and the exercise of remedies upon a breach or default.

The foregoing description of the Agreement is not complete and is qualified in its entirety by reference to the full texts of the Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K (this “Current Report”), and is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information disclosed in Item 1.01 of this Current Report is incorporated by reference into this Item 2.03.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 14, 2023, the Board of Directors (the “Board”) of the Company approved and adopted amendments to the Company’s amended and restated bylaws (as amended, the “Amended and Restated Bylaws”), which became effective the same day. Among other things, the amendments contained in the Amended and Restated Bylaws:

- Address the universal proxy rules adopted by the U.S. Securities and Exchange Commission, by clarifying that no person may solicit proxies in support of a director nominee other than the Board’s nominees unless such person has complied with Rule 14a-19 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including applicable notice and solicitation requirements.
- Streamline procedural mechanics and enhance disclosure requirements in connection with stockholder nominations of directors and submissions of proposals regarding other business at stockholder meetings (other than proposals to be included in the Company’s proxy materials pursuant to Rule 14a-8 under the Exchange Act), including, without limitation, by requiring additional background information and disclosures regarding proposing stockholders, proposed director nominees and business, and other persons related to a stockholder’s solicitation of proxies.
- Require that a stockholder directly or indirectly soliciting proxies from other stockholders use a proxy card color other than white.

The Amended and Restated Bylaws also delete certain obsolete provisions and incorporate certain technical, modernizing, clarifying and conforming changes.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, a copy of which is attached hereto as Exhibit 3.1 and is incorporated by reference herein.

Forward-Looking Statements

This Current Report contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. All statements that are not statements of historical facts are, or may be deemed to be, forward-looking statements, including the Company’s statements regarding the intended use of proceeds from the factoring agreement and the ability to collect cash earlier as a result of the factoring agreement. Statements using words such as “expect”, “anticipate”, “believe”, “may”, “will” and similar terms are also forward-looking statements. These statements are neither promises nor guarantees, but involve known and unknown risks, uncertainties and other important factors that may cause the Company’s actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements, including, but not limited to, the important factors discussed under the caption “Risk Factors” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022, as updated by subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the Securities and Exchange Commission. The forward-looking statements included in this Current Report are made only as of the date hereof and except as otherwise required by applicable law, the Company undertakes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events, changed circumstances or otherwise.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of bluebird bio, Inc.
10.1*†	Invoice Purchase and Sale Agreement, dated as of December 14, 2023, by and between bluebird bio, Inc. and Alterna Capital Solutions LLC.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Annexes, schedules and exhibits have been omitted pursuant to Item 601(b)(2) or 601(a)(5), as applicable, of Regulation S-K. The registrant agrees to furnish supplementally a copy of any omitted attachment to the SEC on a confidential basis upon request.

† Portions of this exhibit (indicated by asterisks) have been omitted in accordance with the rules of the SEC.

SIGNATURES

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

Date: December 18, 2023

bluebird bio, Inc.

By: /s/ Joseph Vittiglio

Name: Joseph Vittiglio

Title: *Chief Legal & Business Officer and Secretary*

AMENDED AND RESTATED

BY-LAWS

OF

BLUEBIRD BIO, INC.

(the "Corporation")

as of December 14, 2023

ARTICLE I

STOCKHOLDERS

Section 1 Annual Meeting. The annual meeting of stockholders of the Corporation (any such meeting being referred to in these By-laws as an "Annual Meeting") shall be held at the hour, date and place within or without the United States which is fixed by the Board of Directors, which time, date and place may subsequently be changed at any time by vote of the Corporation's Board of Directors (the "Board of Directors"). The Board of Directors may, in its sole discretion, determine that an Annual Meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL").

Section 2 Notice of Stockholder Business and Nominations.

(a) Notice of Business to be Brought Before an Annual Meeting.

(i) At an Annual Meeting, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an Annual Meeting, business must be (1) specified in a notice of meeting given by or at the direction of the Board of Directors, (2) if not specified in a notice of meeting, otherwise brought before the meeting by the Board of Directors or the Chairperson of the Board of Directors or (3) otherwise properly brought before the meeting by a stockholder present in person who (A) (i) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Article I, Section 2(a) and at the time of the meeting, (ii) is entitled to vote at the meeting, and (iii) has complied with this Article I, Section 2(a) in all applicable respects or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"). The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an Annual Meeting. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Article I, Section 3 of these By-laws, and stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. For purposes of this Article I, Section 2(a), "present in person" shall mean that the stockholder proposing that the business be brought before the Annual Meeting of the Corporation, or a qualified representative of

such proposing stockholder, appear at such Annual Meeting. A “qualified representative” of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person 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. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Article I, Section 2(b) and this Article I, Section 2(a) shall not be applicable to nominations except as expressly provided in Article I, Section 2(b).

(ii) Without qualification, for business to be properly brought before an Annual Meeting by a stockholder, the stockholder must (1) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (2) provide any updates or supplements to such notice at the times and in the forms required by this Article I, Section 2(a). To be timely, a stockholder’s notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year’s Annual Meeting; provided, however, that if the date of Annual Meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder, to be timely, must be so delivered, or mailed and received, not more than one hundred twenty (120) days prior to such Annual Meeting and not later than ninety (90) days prior to such Annual Meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such Annual Meeting was first made by the Corporation (such notice within such time periods, “Timely Notice”). In no event shall any adjournment or postponement of an Annual Meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(iii) To be in proper form for purposes of this Article I, Section 2(a), a stockholder’s notice to the Secretary shall set forth:

(1) as to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation’s books and records); (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future; (C) the date or dates such shares were acquired; (D) the investment intent of such acquisition; and (E) any pledge by such Proposing Person with respect to any of such shares (the disclosures to be made pursuant to the foregoing clauses (A) through (E) are referred to as “Stockholder Information”);

(2) as to each Proposing Person:

(A) the material terms and conditions of any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) or a “put equivalent position” (as such term is defined in Rule 16a-1(h) under the Exchange Act) or other derivative or synthetic arrangement in respect of any class or series of shares of the Corporation (“Synthetic Equity Position”) that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such Proposing Person, including, without limitation, (i) any option, warrant, convertible security, stock appreciation right, future or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, (ii) any derivative or synthetic arrangement having the characteristics of a long position or a short position in any class or series of shares of the Corporation, including, without limitation, a stock loan transaction, a stock borrow transaction, or a share repurchase transaction or (iii) any contract, derivative, swap or other transaction or series of transactions designed to (x) produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, (y) mitigate any loss relating to, reduce the economic risk (of ownership or otherwise) of, or manage the risk of share price decrease in, any class or series of shares of the Corporation, or (z) increase or decrease the voting power in respect of any class or series of shares of the Corporation of such Proposing Person, including, without limitation, due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the holder thereof may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price or value of any class or series of shares of the Corporation; provided that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be required to disclose any Synthetic Equity Position that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer;

(B) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation;

(D) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand;

(E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(F) any proportionate interest in shares of the Corporation or Synthetic Equity Position held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which any such Proposing Person (i) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, or (ii) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of such limited liability company or similar entity;

(G) a representation that such Proposing Person intends or is part of a group that intends to deliver a proxy statement 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 or otherwise solicit proxies from stockholders in support of such proposal; and

(H) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (H) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these By-laws on behalf of a beneficial owner; and

(3) as to each item of business that such stockholder proposes to bring before the Annual Meeting:

(A) a brief description of the business desired to be brought before the Annual Meeting, the reasons for conducting such business at the Annual Meeting and any material interest in such business of each Proposing Person,

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws, the language of the proposed amendment);

(C) a reasonably detailed description of all agreements, arrangements and understandings (i) between or among any of the Proposing Persons or (ii) between or among any Proposing Person and any other person (including their names) in connection with the proposal of such business by such stockholder; and

(D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this Article I, Section 2(a)(iii) (3) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these By-laws on behalf of a beneficial owner.

For purposes of this Article I, Section 2(a), the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an Annual Meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the Annual Meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(4) The Board of Directors may request that any Proposing Person furnish such additional information as may be reasonably required by the Board of Directors. Such Proposing Person shall provide such additional information within ten (10) days after it has been requested by the Board of Directors.

(iv) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an Annual Meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Article I, Section 2(a) shall be true and correct as of the record date for stockholders entitled to

vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (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). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these By-laws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(v) Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at an Annual Meeting that is not properly brought before the meeting in accordance with this Article I, Section 2(a). The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Article I, Section 2(a), and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

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

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

(b) Notice of Nominations for Election to the Board of Directors.

(i) Nominations of any person for election to the Board of Directors at an Annual Meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (1) by or at the direction of the Board

of Directors, including by any committee or persons authorized to do so by the Board of Directors or these By-laws, or (2) by a stockholder present in person who (A) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Article I, Section 2(b) and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Article I, Section 2(b) as to such notice and nomination. For purposes of this Article I, Section 2(b), "present in person" shall mean that the stockholder nominating any person for election to the Board of Directors at the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person 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. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an Annual Meeting or special meeting.

(ii) (1) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an Annual Meeting, the stockholder must (A) provide Timely Notice (as defined in Article I, Section 2(a)) thereof in writing and in proper form to the Secretary of the Corporation, (B) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Article I, Section 2(b) and (C) provide any updates or supplements to such notice at the times and in the forms required by this Article I, Section 2(b).

(2) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (A) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (B) provide the information with respect to such stockholder and its candidate for nomination as required by this Article I, Section 2(b) and (C) provide any updates or supplements to such notice at the times and in the forms required by this Article I, Section 2(b). To be timely, a stockholder's notice for nominations to be made at a special meeting pursuant to Article I, Section 3 must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than one hundred twenty (120) days prior to such special meeting and not later than ninety (90) days prior to such special meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such special meeting was first made.

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

(4) In no event may a Nominating Person (as defined below) provide Timely Notice with respect to a greater number of director candidates than are subject to election by stockholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (A) the conclusion of the time period for Timely Notice, (B) the conclusion of the time period for notice to be “timely” as set forth in Article I, Section 2(b)(ii)(2) or (C) the tenth day following the date of public announcement of such increase.

(iii) To be in proper form for purposes of this Article I, Section 2(b), a stockholder’s notice to the Secretary shall set forth:

(1) As to each Nominating Person, the Stockholder Information (as defined in Article I, Section 2(a)(iii)(1), except that for purposes of this Article I, Section 2(b) the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Article I, Section 2(a)(iii)(1)); and

(2) As to each Nominating Person, any Disclosable Interests (as defined in Article I, Section 2(a)(iii)(2), except that for purposes of this Article I, Section 2(b) the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Article I, Section 2(a)(iii)(2) and the disclosure with respect to the business to be brought before the meeting in Article I, Section 2(a)(iii)(2) shall be made with respect to the election of directors at the meeting); and provided that, in lieu of including the information set forth in Article I, Section 2(a)(iii)(2)(G), the Nominating Person’s notice for purposes of this Article I, Section 2(b) shall include a representation as to whether the Nominating Person intends or is part of a group which intends to deliver a proxy statement and solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Corporation’s nominees in accordance with Rule 14a-19 promulgated under the Exchange Act; and

(3) As to each candidate whom a Nominating Person proposes to nominate for election as a director:

(A) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate’s written consent to being named in a proxy statement and accompanying proxy card relating to the Corporation’s next meeting of stockholders at which directors are to be elected and to serving as a director for a full term if elected);

(B) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the “registrant” for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant;

(C) a completed and signed written questionnaire (in the form provided by the Corporation upon written request of any stockholder of record therefor) with respect to the background, qualifications, stock ownership and independence of such proposed nominee; and

(D) a written representation and agreement (in the form provided by the Corporation upon written request of any stockholder of record therefor) that such candidate for nomination (i) is not and, if elected as a director during his or her term of office, will not become a party to (x) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment"), or (y) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed therein or to the Corporation, (iii) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect), and (iv) if elected as a director of the Corporation, intends to serve the entire term until the next meeting at which such candidate would face re-election.

For purposes of this Article I, Section 2(b), the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(iv) The Board of Directors may request that any Nominating Person furnish such additional information as may be reasonably required by the Board of Directors. Such Nominating Person shall provide such additional information within ten (10) days after it has been requested by the Board of Directors.

(v) The Board of Directors may also require any proposed candidate for nomination as a director to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon. Without limiting the generality of the foregoing, the Board of Directors may request such other information in order for the Board of Directors to determine the eligibility of such candidate for nomination to be an independent director of the Corporation or to comply with the director qualification standards and additional selection criteria in accordance with the Corporation's Corporate Governance Guidelines. Such other information shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five (5) business days after the request by the Board of Directors has been delivered to, or mailed and received by, the Nominating Person.

(vi) A stockholder providing notice of any nomination proposed to be made at a meeting and any candidate for nomination as a director shall further update and supplement such notice or the materials delivered pursuant to this Article I, Section 2(b), as applicable, if necessary, so that the information provided or required to be provided, either in such notice or by such candidate, as applicable, pursuant to this Article I, Section 2(b) shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (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). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these By-laws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination, including by changing or adding nominees, or to submit any new nomination, or submit any new proposal, matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(vii) In addition to the requirements of this Article I, Section 2(b) with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations. Notwithstanding the foregoing provisions of this Article I, Section 2(b), unless otherwise required by law, (1) no Nominating Person shall solicit proxies in support of director nominees other than the Corporation's nominees unless such Nominating Person has complied with Rule 14a-19 promulgated under the Exchange Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner and (2) if any Nominating

Person (A) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, including the provision to the Corporation of notices required thereunder in a timely manner, or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Nominating Person has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act in accordance with the following sentence, then the nomination of each such proposed nominee shall be disregarded, notwithstanding that the nominee is included as a nominee in the Corporation's proxy statement, notice of meeting or other proxy materials for any annual meeting (or any supplement thereto) and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). If any Nominating Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Nominating Person shall deliver to the Corporation, no later than seven (7) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(viii) No candidate nominated pursuant to this Article I, Section 2(b) shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with this Article I, Section 2(b), as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Article I, Section 2(b), and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

Section 3 Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock (as defined in the Certificate), special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office. The Board of Directors may postpone, reschedule or cancel any previously scheduled special meeting of stockholders. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

Section 4 Notice of Meetings; Adjournments.

(a) A notice of each meeting of stockholders stating the hour, date and place, if any, of such meeting and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than ten (10) days nor more than sixty (60) days before the Annual Meeting, to each stockholder entitled to vote thereat by delivering such notice to such stockholder or by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy

holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

(b) When any Annual Meeting or special meeting of stockholders is adjourned to another hour, date or place, notice need not be given of the adjourned meeting if the hour, date and place, if any, to which the meeting is adjourned and the means of remote communications, if any, by which stockholders and proxyholders 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 or are provided in any other manner permitted by the DGCL. If the adjournment is for more than thirty (30) days from the meeting date, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting shall be given to each stockholder of record entitled to vote thereat and each stockholder who, by law or under the Certificate of Incorporation of the Corporation (as the same may hereafter be amended and/or restated, the "Certificate") or these By-laws, is entitled to such notice.

Section 5 Quorum. A majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at any meeting of stockholders. If less than a quorum is present at a meeting, the holders of voting stock representing a majority of the voting power present at the meeting or the presiding officer may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice, except as provided in Section 4 of this Article I. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. The stockholders present at a duly constituted meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 6 Voting and Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law, including Rule 14a-19 promulgated under the Exchange Act, filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission which sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 7 Action at Meeting. When a quorum is present at any meeting of stockholders, any matter before any such meeting (other than an election of a director or directors) shall be decided by a majority of the votes properly cast for and against such matter, except where a larger vote is required by law, by the Certificate or by these By-laws. When a

quorum is present at any meeting of stockholders, a nominee for director shall be elected to the Board of Directors if the votes properly cast for such nominee's election exceed the votes properly cast against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes properly cast at any meeting of stockholders at which there is a contested election of directors. An election shall be considered contested if as of the record date of any meeting of stockholders there are more nominees for election than positions on the Board of Directors to be filled by election at that meeting.

Section 8 Stockholder Lists. The Secretary or an Assistant Secretary, if any (or the Corporation's transfer agent or other person authorized by these By-laws or by law) shall prepare and make, no later than the tenth day before each Annual Meeting or special meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and 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 a period of ten (10) days, ending on the day before the meeting date in the manner provided by law. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. 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 Article I, Section 8 or to vote in person or by proxy at any meeting of stockholders.

Section 9 Presiding Officer. The Board of Directors shall designate a representative to preside over all Annual Meetings or special meetings of stockholders, provided that if the Board of Directors does not so designate such a presiding officer, then the Chairperson of the Board, if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chairperson of the Board or the Chairperson of the Board is unable to so preside or is absent, then the Chief Executive Officer, if one is elected, shall preside over such meetings, provided further that if there is no Chief Executive Officer or the Chief Executive Officer is unable to so preside or is absent, then the President shall preside over such meetings. The presiding officer at any Annual Meeting or special meeting of stockholders shall have the power, among other things, to adjourn such meeting at any time and from time to time, subject to Sections 4 and 5 of this Article I. The order of business and all other matters of procedure at any meeting of the stockholders shall be determined by the presiding officer.

Section 10 Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer shall appoint one or more inspectors to act at the meeting. Any inspector may, but need not, be an officer, employee or agent of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall perform such duties as are required by the DGCL, including the counting of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. The presiding officer may review all determinations made by the inspectors, and in so doing the presiding officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any determinations made by the inspectors. All determinations by the inspectors and, if applicable, the presiding officer, shall be subject to further review by any court of competent jurisdiction.

Section 11 Delivery to the Corporation. Whenever this Article I requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), unless the Corporation otherwise provides, such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by this Article I.

ARTICLE II

DIRECTORS

Section 1 Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided by the Certificate or required by law.

Section 2 Number and Terms. The number of directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate.

Section 3 Qualification. No director need be a stockholder of the Corporation.

Section 4 Vacancies. Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate.

Section 5 Removal. Directors may be removed from office only in the manner provided in the Certificate.

Section 6 Resignation. A director may resign at any time by giving written notice to the Chairperson of the Board, if one is elected, the President or the Secretary. A resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 7 Regular Meetings. Regular meetings of the Board of Directors may be held at such hour, date and place as which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other means of electronic transmission. No further notice shall be required for regular meetings of the Board of Directors.

Section 8 Special Meetings. Special meetings of the Board of Directors may be called, orally or in writing, by or at the request of a majority of the directors, the Chairperson of the Board, if one is elected, or the President. The person calling any such special meeting of the Board of Directors may fix the hour, date and place thereof.

Section 9 Notice of Special Meetings. Notice of the hour, date and place of all special meetings of the Board of Directors shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairperson of the Board, if one is elected, or the President or such other officer designated by the Chairperson of the Board, if one is elected, or the President. Notice of any special meeting of the Board of Directors shall be given to each director in person, by telephone, or by facsimile, electronic mail or other form of electronic communication, sent to his or her business or home address, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to his or her business or home address, at least forty-eight (48) hours in advance of the meeting. Such notice shall be deemed to be delivered when hand-delivered to such address, read to such director by telephone, deposited in the mail so addressed, with postage thereon prepaid if mailed, dispatched or transmitted if sent by facsimile transmission or by electronic mail or other form of electronic communications.

Section 10 Quorum. At any meeting of the Board of Directors, a majority of the total number of directors shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time, and the meeting may be held as adjourned without further notice. Any business that might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present. For purposes of this section, the total number of directors includes any unfilled vacancies on the Board of Directors.

Section 11 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of the directors present shall constitute action by the Board of Directors, unless otherwise required by law, by the Certificate or by these By-laws.

Section 12 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all members of the Board of Directors consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the records of the meetings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Such consent shall be treated as a resolution of the Board of Directors for all purposes.

Section 13 Manner of Participation. Directors may participate in meetings of the Board of Directors by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these By-laws.

Section 14 Presiding Director. The Board of Directors shall designate a representative to preside over all meetings of the Board of Directors, provided that if the Board of Directors does not so designate such a presiding director or such designated presiding director is unable to so preside or is absent, then the Chairperson of the Board, if one is elected, shall preside over all meetings of the Board of Directors. If both the designated presiding director, if one is so designated, and the Chairperson of the Board, if one is elected, are unable to preside or are absent, the Board of Directors shall designate an alternate representative to preside over a meeting of the Board of Directors.

Section 15 Committees. The Board of Directors may designate one (1) or more committees, each committee to consist, of one (1) or more of the directors of the Corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members 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. Any such committee, to the extent provided in the resolution of the Board of Directors or in these By-laws, 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 that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Corporation.

Section 16 Compensation of Directors. Directors shall receive such compensation for their services as shall be determined by a majority of the Board of Directors, or a designated committee thereof, provided that directors who are serving the Corporation as employees and who receive compensation for their services as such, shall not receive any salary or other compensation for their services as directors of the Corporation.

ARTICLE III

OFFICERS

Section 1 Enumeration and Appointment. The officers of the Corporation shall be appointed by the Board of Directors and shall consist of a President, a Treasurer, a Secretary and such other officers, including, without limitation, a Chief Executive Officer and one or more Vice Presidents (including Executive Vice Presidents or Senior Vice Presidents), Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board of Directors may determine.

Section 2 Qualification. No officer need be a stockholder or a director of the Corporation. Any person may occupy more than one office of the Corporation at any time.

Section 3 Tenure. Except as otherwise provided by the Certificate or by these By-laws, each of the officers of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 4 Resignation. Any officer may resign by delivering his or her written resignation to the Corporation addressed to the President or the Secretary, and such resignation shall be effective upon receipt, unless the resignation otherwise provides.

Section 5 Removal. Except as otherwise provided by law, the Board of Directors may remove any officer with or without cause by the affirmative vote of a majority of the directors then in office.

Section 6 Absence or Disability. In the event of the absence or disability of any officer, the Board of Directors may designate another officer to act temporarily in place of such absent or disabled officer.

Section 7 Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

Section 8 President. The President shall, subject to the direction of the Board of Directors, have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 9 Chief Executive Officer. The Chief Executive Officer, if one is elected, shall have such powers and shall perform such duties as the Board of Directors may from time to time designate.

Section 10 Vice Presidents and Assistant Vice Presidents. Any Vice President (including any Executive Vice President or Senior Vice President) and any Assistant Vice President shall have such powers and shall perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 11 Treasurer and Assistant Treasurers. The Treasurer shall, subject to the direction of the Board of Directors and except as the Board of Directors or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate books of account. The Treasurer shall have custody of all funds, securities, and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. Any Assistant Treasurer shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 12 Secretary and Assistant Secretaries. The Secretary shall record all the proceedings of the meetings of the stockholders and the Board of Directors (including committees of the Board of Directors) in books kept for that purpose. In his or her absence from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or that of an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board of Directors or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform his or her duties and responsibilities. Any Assistant Secretary shall have such powers and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time designate.

Section 13 Other Powers and Duties. Subject to these By-laws and to such limitations as the Board of Directors may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board of Directors or the Chief Executive Officer.

ARTICLE IV
CAPITAL STOCK

Section 1 Certificates of Stock. Each stockholder shall be entitled to a certificate of the capital stock of the Corporation in such form as may from time to time be prescribed by the Board of Directors. Such certificate shall be signed by the Chairperson of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. The Corporation seal and the signatures by the Corporation's officers, the transfer agent or the registrar may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law (or, in the case of uncertificated shares, such restrictions shall be set forth in a notice provided pursuant to Section 151 of the DGCL). Notwithstanding anything to the contrary provided in these By-laws, the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these By-laws the Board of Directors has determined that all classes or series of the Corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.

Section 2 Transfers. Subject to any restrictions on transfer and unless otherwise provided by the Board of Directors, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

Section 3 Record Holders. Except as may otherwise be required by law, by the Certificate or by these By-laws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of these By-laws.

Section 4 Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix 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: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (b) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (i) 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; and (ii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5 Replacement of Certificates. In case of the alleged loss, destruction or mutilation of a certificate of stock of the Corporation, a duplicate certificate may be issued in place thereof, upon such terms as the Board of Directors may prescribe.

ARTICLE V

INDEMNIFICATION

Section 1 Definitions. For purposes of this Article:

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 1(a), a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, "Corporate Status" shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person's activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) "Director" means any person who serves or has served the Corporation as a director on the Board of Directors of the Corporation;

(c) “Disinterested Director” means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding;

(d) “Expenses” means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) “Liabilities” means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) “Non-Officer Employee” means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) “Officer” means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors of the Corporation;

(h) “Proceeding” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitral or investigative; and

(i) “Subsidiary” shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

Section 2 Indemnification of Directors and Officers.

(a) Subject to the operation of Section 4 of this Article V of these By-laws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 2.

(i) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(ii) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(iii) Survival of Rights. The rights of indemnification provided by this Section 2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(iv) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these By-laws in accordance with the provisions set forth herein.

Section 3 Indemnification of Non-Officer Employees. Subject to the operation of Section 4 of this Article V of these By-laws, each Non-Officer Employee may, in the discretion of the Board of Directors of the Corporation, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be

made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors of the Corporation.

Section 4 Determination. Unless otherwise ordered by a court, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

Section 5 Advancement of Expenses to Directors Prior to Final Disposition.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors of the Corporation, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these By-laws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the

permissibility of such advancement of Expenses under this Article V shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

Section 6 Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.

(a) The Corporation may, at the discretion of the Board of Directors of the Corporation, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

Section 7 Contractual Nature of Rights.

(a) The provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article V nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce any right conferred by this Article V in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article V shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article V shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

Section 8 Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these By-laws, agreement, vote of stockholders or Disinterested Directors or otherwise.

Section 9 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article V.

Section 10 Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article V as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of Expenses under this Article V owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

Section 11 Exclusive Forum.

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any state law claims for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or By-laws, or (iv) any action asserting a claim governed by the internal affairs doctrine.

(b) Unless the Corporation consents in writing to the selection of an alternative forum, the United States District Court for the District of Massachusetts shall be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 11.

(c) If any action the subject matter of which is within the scope of Article V, Section 11, clause (a) is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of such clause (a) and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to Article V, Section 11. This Article V, Section 11 is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional or entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

ARTICLE VI

MISCELLANEOUS PROVISIONS

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

Section 2 Seal. The Board of Directors shall have power to adopt and alter the seal of the Corporation.

Section 3 Execution of Instruments. All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without director action may be executed on behalf of the Corporation by the Chairperson of the Board, if one is elected, the President or the Treasurer or any other officer, employee or agent of the Corporation as the Board of Directors or the executive committee of the Board may authorize.

Section 4 Voting of Securities. Unless the Board of Directors otherwise provides, the Chairperson of the Board, if one is elected, the President or the Treasurer may waive notice of and act on behalf of the Corporation, or appoint another person or persons to act as proxy or attorney in fact for the Corporation with or without discretionary power and/or power of substitution, at any meeting of stockholders or shareholders of any other corporation or organization, any of whose securities are held by the Corporation.

Section 5 Resident Agent. The Board of Directors may appoint a resident agent upon whom legal process may be served in any action or proceeding against the Corporation.

Section 6 Corporate Records. The original or attested copies of the Certificate, By-laws and records of all meetings of the incorporators, stockholders and the Board of Directors and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Delaware and shall be kept at the principal office of the Corporation, at an office of its counsel, at an office of its transfer agent or at such other place or places as may be designated from time to time by the Board of Directors.

Section 7 Certificate. All references in these By-laws to the Certificate shall be deemed to refer to the Amended and Restated Certificate of Incorporation of the Corporation, as amended and/or restated and in effect from time to time.

Section 8 Amendment of By-laws.

(a) Amendment by Directors. Except as provided otherwise by law, these By-laws may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the directors then in office.

(b) Amendment by Stockholders. These By-laws may be amended or repealed at any Annual Meeting, or special meeting of stockholders called for such purpose in accordance with these By-Laws, by the affirmative vote of at least seventy-five percent (75%) of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class. Notwithstanding the foregoing, stockholder approval shall not be required unless mandated by the Certificate, these By-laws, or other applicable law.

Section 9 Notices. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 10 Waivers. Whenever notice is required to be given under any provision of the DGCL, the Certificate or these By-laws, 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 of the event for which notice is to be given, 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 Board of Directors or any Annual Meeting or special meeting of stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate or these By-laws.

INVOICE PURCHASE AND SALE AGREEMENT

THIS INVOICE PURCHASE AND SALE AGREEMENT (“Agreement”) is made on this 14th day of December 2023 between bluebird bio, inc., a Delaware Corporation (“Seller”), and Alterna Capital Solutions LLC, a Florida limited liability company (“Purchaser”).

1. Definitions and Index to Definitions. The following terms shall have the following meanings. All capitalized terms not otherwise defined in this Agreement shall have the meaning set forth in the Uniform Commercial Code (the “UCC”) as adopted in the Chosen State:

- 1.1. “Account” – the right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, licensed, assigned, or otherwise disposed of or for services rendered or to be rendered.
- 1.2. “Account Debtor”—any person who is obligated to Seller on an Account.
- 1.3. “Advance Rate” – 90%, provided if Dilution exceeds 5% in the aggregate for all Purchased Receivables, the Parties shall negotiate in good faith a new Advance Rate.
- 1.4. “Affiliate”—with respect to any Person, any Person controlled by such Person, controlling such Person, or under common control with such Person, with “control” meaning: (a) 50% or more ownership of voting interests; or (b) the right to direct the management and business affairs of a Person.
- 1.5. “Avoidance Claim” - Any claim that a payment received by Purchaser is a preference or otherwise avoidable under the United States Bankruptcy Code or any other debtor-relief statute.
- 1.6. “Balance Subject to Funds Usage Daily Rate” - The unpaid Face Amount due on all Purchased Accounts (other than past due Purchased Accounts) minus any positive balance of the Reserve Account.
- 1.7. “Business Day” – A day on which a bank is open for business in the Chosen State.
- 1.8. “Change of Control”—A merger, consolidation or transfer of equity securities (pursuant to a single transaction or series of related transactions) of Seller, with or to any independent third party, which, in any case, results in the equity holders of Seller immediately prior to such transaction possessing less than a majority of the beneficial voting power or ownership interests of Seller’s, or any successor entity’s issued and outstanding equity securities immediately after such transaction or series of such transactions; or a sale, lease or exclusive license, in a single transaction or series of related transactions, to an independent third party of all or substantially all of Seller’s assets (other than a disposition of such assets as an entirety or virtually as an entirety to a wholly-owned Subsidiary of Seller);
- 1.9. “Chosen State” – Florida.
- 1.10. “Clearance Days” – Three (3) Business Days.
- 1.11. “Closed”—An Account for which Purchaser has received full payment.
- 1.12. “Collateral” – All Purchased Accounts.



- 1.13. "Collateral Monitoring Fee"—0.05% of the Balance Subject to the Daily Funds Usage Rate for each month, which shall be charged and paid on the last day of each month.
- 1.14. "Complete Termination"—Complete Termination occurs upon satisfaction of the following conditions: (i) payment in full of all Obligations of Seller to Purchaser and (ii) Seller and all guarantors of the Obligations have executed and delivered to Purchaser a general release substantially in a form attached hereto as Exhibit A.
- 1.15. "Dispute" – See Section 2.
- 1.16. "Dilution" – With respect to any Eligible Account, all reductions in the Face Amount thereof as a result of Disputes; provided, that neither Credit Risk nor an Insolvency Default shall constitute Dilution.
- 1.17. "Early Termination Fee" - See Section 21.1.
- 1.18. "Eligible Account" – An Account satisfying the following conditions, as determined by the Purchaser in its reasonable discretion: (i) amounts due from domestic customers, (ii) billed and payable in US Dollars, (iii) no more than (a) 60 days past due or (b) [***] from original invoice date, (iv) represent goods or services fully delivered or rendered and (v) not subject to Dilution or Dispute, in each case, as determined on the related Purchase Date.
- 1.19. "Events of Default" - See Section 19 herein.
- 1.20. "Face Amount"—The outstanding amount due on an Account on the Purchase Date.
- 1.21. "Facility Fee"- 1% of the Maximum Amount, which shall be payable by Seller at closing and on any incremental increases to the Maximum Amount and on the first day of each Renewal Term.
- 1.22. "Funds Usage Daily Fee" – The fee accruing on a daily basis, and charged to the Reserve Account in accordance with Section 6, on the Balance Subject to Daily Funds Usage Rate, which shall be calculated as the product of (i) 360, (ii) Daily Funds Usage Percentage and (iii) the Balance Subject to Daily Funds Usage Rate. The Funds Usage Percentage shall be the Prime Rate plus 1.35%, but at no time less than 9.85% per annum or more than 11.85% per annum. The Funds Usage Percentage shall increase or decrease on the same date as any change in the Prime Rate, by the Prime Rate Adjustment.
- 1.23. "Daily Funds Usage Percentage" – 0.0274%.
- 1.24. "Ineligible Account" – A Purchased Account that is not an Eligible Account on the related Purchase Date as reasonably determined by Purchaser.
- 1.25. "Insolvent" – With respect to any Account Debtor and any Account, (a) such Account Debtor has failed to pay any amounts due in respect of such Account solely as a result of (i) the sum of such Account Debtor's debts being greater than the sum of its assets or (ii) a general inability of Account Debtor to pay its debts as they become due; (b) a voluntary or involuntary petition has been filed to declare such Account Debtor bankrupt or to allow reorganization or refinancing under a plan to meet the debts of such Account Debtor under any applicable bankruptcy law or (c) Purchaser has otherwise determined that such Account Debtor is insolvent.



1.26. "Insolvency Default" – As defined in Section 8.

1.27. "Invoice" - The document that evidences or is intended to evidence an Account. Where the context so requires, reference to an Invoice shall be deemed to refer to the Account to which it relates.

1.28. "Material Adverse Change"—An event that results or is reasonably likely to result in (a) a material adverse change in the financial condition, operations or properties of Seller or that materially impairs the ability of Seller to fulfill its obligations hereunder, (b) a material deterioration in the value of the Purchased Accounts, or (c) the impairment of the validity or enforceability of, or a material adverse effect on the rights, remedies or benefits available to, Purchaser under this Agreement.

1.29. "Maximum Amount" –Up to \$100,000,000.00 of Balance subject to Funds Usage Daily Rate at any given time.

1.30. "Misdirected Payment Fee" – The fee the Seller shall pay to the Purchaser for each payment on account of a Purchased Account which has been received by Seller or by a third party ("Misdirected Payment") and not paid to Purchaser on the third Business Day following the later of (a) the date of receipt of the Misdirected Payment by Seller or a third party or (b) the date of Seller's knowledge of receipt of the Misdirected Payment by such third party. The amount of the Misdirected Payment Fee shall be 15% of the amount of the Misdirected Payment.

1.31. "Obligations"—All present and future Obligations and liabilities owing by Seller to Purchaser, whether direct or indirect, absolute or contingent, charged to the Reserve Account or directly payable, including without limitation fees, and costs, arising hereunder, and whether arising before, during or after the commencement of any case filed under title 11 of the United States Bankruptcy Code or any other debtor relief proceeding in which Seller is a Debtor.

1.32. "Parties" - Seller and Purchaser.

1.33. "Payor" - An Account Debtor, other obligor, or entity obligated on an Account, making payment on behalf of such party.

1.34. "Person" - Any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

1.35. "Prime Rate" - means, for any day, the rate of interest in effect for such day that is identified and normally published by The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published as the Prime Rate, then the highest of such rates), with any change in Prime Rate to become effective as of the date the rate of interest which is so identified as the "Prime Rate" is different from that published on the preceding Business Day. If The Wall Street Journal no longer reports the Prime Rate, or if the Prime Rate no longer exists, then the Purchaser may select a reasonably comparable index or source to use as the basis for the Prime Rate.



- 1.36. Prime Rate Adjustment” – 0.0007% for every 0.25% change in the Prime Rate when compared to the existing Prime Rate.
- 1.37. “Purchase Date”—The date on which Purchaser has purchased an Account.
- 1.38. “Purchase Price” - The Face Amount of a Purchased Account on the Purchase Date.
- 1.39. “Purchased Account” - An Account purchased by Purchaser which is not Closed.
- 1.40. “Purchased Eligible Account” – An Eligible Account purchased by Purchaser which is not Closed.
- 1.41. “Renewal Term” – See Section 21.
- 1.42. “Required Reserve Amount” – The Reserve Percentage multiplied by the unpaid balance of all Purchased Accounts, plus all accrued fees and expenses that have not been paid or charged to the Reserve Account.
- 1.43. “Reserve Account” - A bookkeeping account on the books of the Purchaser representing the portion of the Purchase Price which has not been paid by Purchaser to Seller, maintained by Purchaser to secure Seller’s performance with the provisions hereof.
- 1.44. “Reserve Percentage”— 100% minus the Advance Rate.
- 1.45. “Reserve Shortfall” - The amount by which the Reserve Account is less than the Required Reserve Amount.
- 1.46. “Term” - See Section 21.
- 1.47. “Termination Date”—The earlier of (i) the date on which Purchaser terminates this Agreement pursuant to Section 21 hereof during the continuance of an Event of Default, or (ii) the end of the Term or the last Renewal Term which was not extended under Section 21.

2. Assignment and Sale. Seller hereby sells and shall continue to sell to Purchaser as absolute owner, and Purchaser hereby purchases and shall continue to purchase from Seller, without recourse (except as otherwise provided in this paragraph) Seller’s Eligible Accounts. Each such Account shall be accompanied by such documentation supporting and evidencing the Account as Purchaser may reasonably request and each such sale shall become effective upon payment of the Purchase Price as provided in this Section 2. Purchaser shall pay the Purchase Price of any Purchased Account, less (i) the Reserve Percentage multiplied by the Purchase Price and (ii) any amounts due to Purchaser from Seller, within two (2) Business Days of the Purchase Date. Seller represents that all Purchased Accounts are sold to Purchaser free and clear of any claims as of the related Purchase Date. With respect to Purchased Accounts, Purchaser agrees to assume the risk of any loss, to the extent such Purchased Account exceeds the Required Reserve Amount, arising solely from the inability of any Account Debtor and/or Payor to pay any invoice relating to such Account at maturity or when such amount otherwise becomes due (“Credit Risk”) or from an Insolvency Default,



provided that such Account Debtor and/or Payor has received and accepted the related goods or services without any dispute, deduction, setoff, defense, claim or counterclaim of any kind by such Account Debtor and/or Payor against Seller relating to such goods or services (a "Dispute"). For the avoidance of doubt, neither Credit Risk nor an Insolvency Default shall be considered a Dispute.

3. Reserve Account.

- 3.1. Purchaser may pay any amounts due Seller hereunder by a credit to the Reserve Account.
- 3.2. Seller shall pay to Purchaser within 3 Business Days of written demand the amount of any Reserve Shortfall.
- 3.3. Purchaser shall pay to Seller upon Seller's request, any amount by which the Reserve Account exceeds the Required Reserve Amount.
- 3.4. Purchaser may charge the Reserve Account with any Obligation then due and payable.
- 3.5. Except as provided in Section 3.3, Purchaser may retain the Reserve Account until Complete Termination.

4. Notice of Assignment and Lock Box. Once per Account Debtor, or as otherwise reasonably necessary to seek collection for Purchased Accounts, Purchaser is authorized to notify any Account Debtor obligated with respect to any Purchased Account that the Purchased Accounts have been assigned to Purchaser by Seller and that payment thereof is to be made to the order of and directly and solely to Purchaser.

5. Authorization for Purchases. Subject to the terms and conditions of this Agreement, Purchaser is authorized to purchase Accounts upon telephonic, facsimile, or other instructions received from anyone purporting to be an officer, employee, or representative of Seller.

6. Fees. Purchaser shall charge the Reserve Account, throughout the Term and any Renewal Term of this Agreement, the following fees: the Collateral Monitoring Fee, Facility Fee, the Funds Usage Daily Fee, and Early Termination Fee on the date(s) that each fee is due and payable as set forth in Sections 1.13, 1.17, 1.21, and 1.22, herein. All computations of fees shall be made by Purchaser on the basis of a three hundred and sixty (360) day year, for the actual number of days elapsed. The actual number of days excludes the day on which the funds are advanced and includes the day on which the fee is paid. Unless Seller objects within ten (10) calendar days, each determination by Purchaser of a fee hereunder shall be conclusive and binding for all purposes absent manifest error.

7. Other Charges and Expenses. Purchaser shall charge the Reserve Account for the following costs and expenses incurred in connection with this Agreement: \$20.00 per wire, the actual field examination fees directly incurred by Purchaser in the administration of this Agreement, and all reasonable attorney's fees and costs actually incurred by Purchaser in connection with this Agreement up to \$50,000 (collectively, "Reimbursable Expenses."). Reimbursable Expenses are due at the time of execution of this Agreement and shall be charged to the Reserve Account or shall become Obligations.



8. Repurchase of Accounts. Seller shall within five (5) Business Days of demand by Purchaser repurchase any Purchased Account that is an Ineligible Account or become subject to a Dispute that has not been resolved by the due date therefor; provided that the Seller shall not be required to so repurchase where the sole reason the Account Debtor has failed to pay any amounts due in respect of such Purchased Account is due to such Account Debtor being Insolvent (such nonpayment, an "Insolvency Default") or due to the Credit Risk of such Account Debtor and/or any other Payor, provided that such Account Debtor and/or Payor has received and accepted the related goods or services without any Dispute. For the avoidance of doubt, Purchaser hereby assumes and, upon Purchaser's purchase of any Purchased Account, Purchaser shall, to the extent such Purchased Account exceeds the Required Reserve Amount, bear the risk of any and all losses, costs, expenses or claims arising from any Insolvency Default by or Credit Risk of an Account Debtor that is not an Affiliate of Seller. In the event Seller is required to repurchase a Purchased Account hereunder, Purchaser shall charge the Reserve Account for the then unpaid Face Amount on the Purchased Account, together with any accrued but unpaid fees relating to the Purchased Account. Purchaser shall release its security interest in any Purchased Account repurchased by Seller. In furtherance of the foregoing, Seller hereby acknowledges and agrees that Purchaser may set off any amounts owing to Seller from Purchaser in connection with Seller's repurchase obligations hereunder.

9. Security Interest. To secure payment and performance of all present and future Obligations of Seller to Purchaser, Seller grants to Purchaser a continuing first priority security interest in and to the Collateral. Seller shall execute and deliver to Purchaser such documents and instruments, including without limitation, UCC-1 financing statements, as Purchaser may request from time to time in order to evidence and perfect its security interest in the Collateral. Seller authorizes Purchaser to file a UCC-1 financing statement, including without limitation, original financing statements, amendments, and continuation statements, in all jurisdictions and offices Purchaser deems appropriate which names Seller as the debtor and describes the Collateral. Notwithstanding the creation of this security interest, it is the intent of the Parties that the relationship of the Parties in respect to all Purchased Accounts shall at all times be that of purchaser and seller, and not that of lender and borrower. Purchaser is not and shall not be a fiduciary of Seller.

10. Clearance Days. Clearance Days shall be added to the date on which Purchaser receives any payment before such payment is credited to reduce outstanding amounts due hereunder.

11. Authorization to Purchaser. Seller will attempt to work with the Purchaser to develop a reasonable plan to implement, at Seller's sole expense, the powers identified in this Section 11. Notwithstanding the foregoing, Purchaser shall have sole discretion to exercise (x) at any time, any of the following powers: (a) receive, take, endorse, assign, deliver, accept and deposit, in the name of Purchaser or Seller, proceeds of any Purchased Account; (b) take or bring, in the name of Purchaser or Seller, all steps, actions, suits or proceedings deemed by Purchaser necessary or desirable to effect collection for such Purchased Accounts; (c) with respect to any credit insurance policy in which Seller is an insured, in the name of Seller and/or Purchaser: (i) file a claim thereunder; and (ii) as required under the policy, assign to the insurer any rights that Seller and/or Purchaser may have in Purchased Accounts; (d) pay any sums necessary to discharge any lien, claim, or encumbrance which is senior to Purchaser's security interest in the Collateral and (e) communicate directly with Seller's Account Debtors on Purchased Accounts and/or Payors to verify the amount and validity of any Purchased Account created by Seller; (f) endorse and deposit on behalf of Seller any checks tendered by an Account Debtor "in full payment" of its obligation to Seller on Purchased Accounts; or (g) during the continuation of an Event of Default, any of the following powers until all of the Obligations have been fully satisfied and discharged: (a) file any claim under (i) any bond or (ii) under any trust fund with respect to any of the foregoing issued for the benefit of Seller individually or as a member of



a class or group; (b) file in the name of Seller or Purchaser or both (i) mechanics lien or related notices, or (ii) claims under any payment bond, in connection with goods or services sold by Seller in connection with the improvement of realty and (c) in Purchaser's name or on behalf of Seller, with Seller to be bound thereby, extend the time of payment of, compromise or settle for cash, credit, return of merchandise, and upon any terms or conditions (collectively, a "Settlement"), all Purchased Accounts and discharge or release any Account Debtor or other obligor (including filing of any public record releasing any lien granted to Seller by such Account Debtor on Purchased Accounts), without affecting any of the Obligations, in each case, with the objective of maximizing recoveries. All settlements are presumed to be commercially reasonable, with the burden of proof on Seller with respect thereto.

12. Agreements by Seller.

Seller shall not: (a) grant any extension of time for payment of any Purchased Accounts, (b) compromise or settle any of Purchased Accounts for less than the full amount, (c) release in whole or in part any Payor on Purchased Accounts, or (d) grant credits, discounts, allowances, deductions, or return authorizations for any Purchased Accounts, in each case, unless Seller shall have first agreed to repurchase the affected Purchased Accounts.

12.1. Seller shall keep at its principal place of business for a period of five years all books of account and business records relating to the Collateral customary for the industry, which books and records are subject to inspection by Purchaser and its agents and representatives during normal business hours on reasonable advance written notice. Seller shall permit Purchaser or its designee to make copies of such books and records as Purchaser may request.

12.2. Seller shall give Purchaser thirty (30) Business Days' prior written notice of any proposed change to its present name, the address of its headquarters or where its books and records are located, and any proposed change to its jurisdiction of organization or type of legal organization.

12.3. Seller shall pay when due all of its payroll and other taxes.

12.4. Seller shall not create, incur, or permit the existence of any lien upon any Collateral without prior consent of Purchaser, which consent will not be unreasonably withheld so long as the subordinate secured party and Purchaser enter into a consent agreement acceptable to Purchaser. As of the date of this Agreement, Purchaser consents to the existence of the UCC liens identified on Schedule A attached hereto, which are in existence as of the date of this Agreement, subject to the terms and conditions set forth in Schedule A.

12.5. Seller shall pay to Purchaser within 3 Business Days following the date of receipt by Seller the amount of (a) any payment on account of a Purchased Account; Seller shall hold the funds described herein in trust for Purchaser.

12.6. Seller shall provide to Purchaser, within ten (10) days of the end of each calendar month a detailed aging of accounts receivable as of the last day of each month.



12.7. Seller shall provide to Purchaser, annually within 90 days after the close of Seller's fiscal year, financial statements, including a profit and loss statement and balance sheet, provided that, all financial statements or other information required to be furnished pursuant to this section 12.6 shall be deemed to be delivered on the date (i) on which Seller posts such documents, or provides a link thereto on Seller's website (or such other website address as the Seller may specify by written notice to the Purchaser from time to time) or (ii) on which such documents are posted on an internet or intranet website to which the Purchaser has access (whether a commercial, government or third-party website or whether sponsored by or on behalf of the Purchaser).

12.8. In the event that Purchaser sends a notice of assignment to a Payor obligated with respect to any Purchased Account pursuant to Section 11(g), (a) Seller shall not direct such Payor to pay such Purchased Account to Seller or any other entity or individual, or undermine or interfere with such notice of assignment in any manner; and (b) Seller agrees that a violation of this Section 12.7 will put the value of the Collateral at risk and will cause irreparable harm to Purchaser and Purchaser shall be entitled to seek injunctive relief to prevent such violation without the necessity of proving that actual damages are not an adequate remedy.

13. **Account Statement.** Purchaser may make available to Seller a statement setting forth the transactions arising hereunder. Absent manifest error, each statement shall be considered correct and binding upon Seller as an account statement, except to the extent that Purchaser receives, within thirty (30) days after the availability of such statement, written notice from Seller of any specific exceptions by Seller to that statement, and then it shall be binding against Seller as to any items to which it has not objected.

14. **Account Disputes.** Seller shall notify Purchaser of all Disputes concerning any Purchased Account that are not resolved by the due date therefor.

15. **Overadvance.** If at any time and for any reason the total aggregate amount of outstanding Balance Subject to Funds Usage Daily Rate exceeds the Maximum Amount (any such excess being an "Overadvance"), Seller will upon demand by Purchaser immediately pay to Purchaser in cash the amount of any such Overadvance, unless the Overadvance is preapproved, at which point the terms of the Overadvance Rider, in a form attached hereto as Exhibit B, shall control. Without affecting Seller's obligation to immediately repay to Purchaser the amount of each Overadvance, Seller shall pay Purchaser a fee (the "Overadvance Fee") in an amount of \$500.00 per each occurrence of an Overadvance. Without limiting the foregoing, all Overadvances shall be deemed Obligations and shall be secured by the Collateral and guaranteed under all guaranties executed in connection with the Agreement.

16. **Representation and Warranties.** Seller represents and warrants that (a) Seller is fully authorized to enter into this Agreement; (b) this Agreement constitutes a legal and valid obligation that is binding upon Seller and that is enforceable against it; (c) Seller is solvent and in good standing in the state of its organization; (d) there are no pending actions, suits, or other legal proceedings of any kind (whether civil or criminal) now pending (or, to its knowledge, threatened) against Seller, which would in any material respect reasonably be expected to affect its ability to perform its obligations under this Agreement; (e) Seller has not conducted business under or used any other name, whether legal or fictitious; (f) as of the Purchase Date, the Purchased Accounts are (i) bona fide existing Obligations created by the sale and delivery of goods or the rendition of services in the ordinary course of its business, (ii) unconditionally owed (subject to applicable bankruptcy and insolvency limitations) without any Dispute, (iii) not sales to any Affiliates of Seller, and (iv) "arm's length" transactions; (g) as of the Purchase Date, Seller has not received



notice of actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any applicable Account Debtor regarding Purchased Accounts; (h) None of the Seller, any of its subsidiaries, any director or officer, or any employee, agent, or Affiliate, of the Seller or any of its subsidiaries is a person that is, or is owned or controlled by persons that are, (i) the subject of any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority or other relevant sanctions authority (collectively, "Sanctions"), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, including, without limitation, currently, Cuba, the Crimea region of Ukraine, Iran, North Korea, Sudan and Syria (i) None of the Seller or any of its subsidiaries, nor to the knowledge of the Seller, any director, officer, agent, employee, Affiliate or other person acting on behalf of the Seller or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to, the United Kingdom Bribery Act 2010 (the "UK Bribery Act") and the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA"). Furthermore, the Seller and, to the knowledge of the Seller, its Affiliates have conducted their businesses in compliance with the UK Bribery Act, the FCPA and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

17. Indemnification. Seller agrees to indemnify Purchaser and hold it harmless against any and all manner of suits, claims, liabilities, demands, damages, expenses, reasonable attorneys' fees, and collection costs resulting from or arising out of this Agreement ("Indemnified Loss") due to (i) the material breach by the Seller of its covenants, representations or warranties set forth in this Agreement, (ii) any misappropriation or theft of proceeds of the Accounts by the Seller, (iii) the gross negligence or willful misconduct of the Seller in its performance of its duties hereunder or (iv) any failure by the Seller in servicing the Purchased Accounts hereunder to comply in any material respect with any Applicable Law; provided, however, that (A) the Seller shall not indemnify any Purchaser against any loss, damage, liability or cost, fee or expense incurred by such Purchaser to the extent arising out of or related to any Purchaser's (i) breach of this Agreement, (ii) failure to comply in any material respect with Applicable Law, (iii) fraud or (iv) act or omission constituting gross negligence or willful misconduct and (B) nothing in this Section 17 shall be construed as to require the Seller to provide indemnification for any Losses that have the effect of recourse for nonpayment of the Purchased Assets due to Credit Risk or an Insolvency Default. Seller shall pay to Purchaser on demand the amount of such Indemnified Loss within 30 days. Without limiting the generality of the foregoing, the Seller's indemnification shall include but not be limited to, any loss arising out of the Purchaser's exercise of its rights pursuant to Section 11 herein. This provision shall survive termination of this Agreement.

18. Disclaimer of Liability. Purchaser will not be liable to Seller and Seller will not be liable to Purchaser for any lost profits, lost savings or other consequential, incidental, punitive, or special damages resulting from or arising out of or in connection with this Agreement.

19. Default and Events of Default. The following events will constitute an Event of Default hereunder:

- (a) Seller defaults in the payment of any Obligations when due and payable and does not cure the default within three (3) Business Days of the default;
- (b) Seller fails to perform in any material respect any covenant or agreement, provision or other undertaking under this Agreement and the same remains uncured ten (10) Business Days following written notice thereof from Purchaser;
- (c) any representation or warranty of the Seller contained in this Agreement proves to be false in any material respect when made and the same

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remains uncured ten (10) Business Days following written notice thereof from Purchaser; (d) Seller becomes subject to any debtor-relief proceedings; and (e) any lien, garnishment, attachment or the like shall be issued against or shall attach to the Purchased Accounts, the Collateral or any portion thereof and the same is not released within five (5) days.

PURCHASER'S FAILURE TO CHARGE OR ACCRUE FEES AT ANY "DEFAULT" OR "PAST DUE" RATE SHALL NOT BE DEEMED A WAIVER BY PURCHASER OF ITS CLAIM FOR SUCH FEES

Upon the occurrence of any Event of Default, in addition to any rights Purchaser has under this Agreement or applicable law, Purchaser may immediately terminate this Agreement, at which time this Agreement shall terminate and no further purchases of Purchased Receivables shall occur.

20. Amendment and Waiver. This Agreement may only be modified in writing signed by all Parties. No failure or delay in exercising any right shall impair any right that Purchaser has, nor shall any waiver by Purchaser be deemed a waiver of any default or breach occurring subsequently. Purchaser's rights and remedies are cumulative and not exclusive of each other or of any rights or remedies that Purchaser would otherwise have.

21. Term and Termination Date. This Agreement shall be effective when executed by all of the Parties, shall continue in full force and effect for 12 months thereafter (the "Term"), and shall be further extended automatically annually (the "Renewal Term"), unless Seller provides written notice of its intention to terminate at least sixty (60) days prior the end of the respective Term or Renewal Term. Notwithstanding the preceding sentence, Seller's obligations to pay the Obligations as they may become due shall survive any such termination .

21.1. If Seller provides notice of its intent to terminate under Section 21.2 herein, then in addition to any other fees or amounts due under this Agreement, Seller agrees that it will pay Purchaser an Early Termination Fee equal to 2% of the Maximum Amount if this Agreement is terminated during the first 12 months of this Agreement and 0.75% of the Maximum Amount if this Agreement is terminated during subsequent Terms, provided that Seller has given Purchaser 60 days' notice of termination ("Early Termination Fee"). The Early Termination Fee will be waived should the Seller obtain traditional financing with a corporate credit facility or a royalty financing transaction.

21.2. Purchaser may terminate this Agreement at any time by giving Seller thirty (30) days' prior written notice of termination, whereupon this Agreement shall terminate on the later date of thirty (30) days thereafter or the end of the then current Term or Renewal Term.

22. No Lien Termination without Release. In recognition of the Purchaser's right to have its attorneys' fees and other expenses incurred in connection with this Agreement secured by the Collateral, notwithstanding payment in full of all Obligations by Seller, Purchaser shall not be required to record any terminations or satisfactions of any of Purchaser's liens on the Collateral unless and until Complete Termination has occurred. Upon Complete Termination, Seller shall be authorized to file any UCC3 termination statements necessary for the release of liens on the Collateral and Purchaser shall take all necessary action required to release such lien. Seller understands that this provision constitutes a waiver of its rights under §9-513 of the UCC.

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23. **Conflict.** Unless otherwise expressly stated in any other agreement between Purchaser and Seller, if a conflict exists between the provisions of this Agreement and the provisions of such other agreement, the provisions of this Agreement shall control.

24. **Severability.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

25. **Expenses.** In addition to those expenses set forth in Section 7 herein, Seller agrees to reimburse Purchaser the actual amount of all costs and expenses, including reasonable attorneys' fees and expenses, which Purchaser may incur (a) protecting, preserving or enforcing any lien, security or other right granted by Seller to Purchaser or arising under applicable law, whether or not suit is brought, including but not limited to the defense of Purchaser's lien priority; (b) for travel and attorneys' fees and expenses incurred in complying with any subpoena or other legal process in any way relating to Seller; and (c) for the actual amount of all costs and expenses, including reasonable attorneys' fees, which Purchaser may incur in enforcing this Agreement, or in connection with any federal or state insolvency proceeding commenced by or against Seller, including those (i) arising out of an automatic stay, (ii) seeking dismissal or conversion of a bankruptcy proceeding or (iii) opposing confirmation of Seller's plan thereunder. All expenses will be subtracted from the Reserve Account or if the Reserve Account balance is insufficient, payable by Seller upon demand by Purchaser. This provision shall survive termination of this Agreement.

26. **Entire Agreement.** This Agreement supersedes all prior or contemporaneous agreements and understandings between the Parties, verbal or written, express or implied, relating to the subject matter hereof. No promises of any kind have been made by Purchaser or any third party to induce Seller to execute this Agreement. No course of dealing, course of performance, or trade usage, and no parol evidence of any nature, shall be used to supplement or modify any terms of this Agreement.

27. **Choice of Law.** This Agreement shall be governed by, construed under, and enforced in accordance with the internal laws of the Chosen State.

28. **Jury Trial Waiver.** IN RECOGNITION OF THE HIGHER COSTS AND DELAY WHICH MAY RESULT FROM A JURY TRIAL, THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (a) ARISING HEREUNDER, OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

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29. **Venue; Jurisdiction.** The Parties agree that any suit, action, or proceeding arising out of the subject matter or the interpretation, performance, or breach of this Agreement, shall, if Purchaser so elects, be instituted in the Courts of Orange County, Florida (each an "Acceptable Forum"). Each Party agrees that the Acceptable Forums are convenient to it, and each Party irrevocably submits to the jurisdiction of the Acceptable Forums, irrevocably agrees to be bound by any judgment rendered in connection with this Agreement and waives any and all objections to jurisdiction or venue that it may have under the laws of the Acceptable Forums or otherwise in those courts in any such suit, action, or proceeding. Should such proceeding be initiated in any other forum, Seller waives any right to oppose any motion or application made by Purchaser as a consequence of such proceeding having been commenced in a forum other than an Acceptable Forum.

30. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement, and any Party delivering such an executed counterpart of the signature page to this Agreement by such means to any other Party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other Party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

31. **Notice.** All notices required to be given to any Party shall be deemed given upon the first to occur of (i) transmittal sent by commercial overnight carrier, (ii) transmittal by electronic means to a receiver under the control of such Party; or (iii) actual receipt by such Party or an employee or agent of such Party. Notices shall be sent to the following addresses, or to such other addresses as each such Party may in writing hereafter indicate:

PURCHASER: Alterna Capital Solutions LLC
2420 Lakemont Ave, Suite 350
Orlando, FL 32814
President, Eugene Stanley Carpenter
[***]

SELLER: bluebird bio, inc.
Attention: Chief Legal Officer
455 Grand Union Boulevard
Somerville, MA 02145

32. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

33. **Assignment.** This Agreement shall not be assigned, pledged or hypothecated by either Party without the prior written consent of the other Party. Provided however, either Party may assign its rights under this agreement without the consent of the other Party, in the event of a Change of Control, in which there is a transfer of all or substantially all of the Eligible Accounts to a third party.

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34. **Confidentiality and Nondisclosure.** The Parties agree that the terms of this Agreement, all business methods and trade secrets, and any and all other records and information clearly and specifically identified by the Applicable Party as confidential will be held in strict confidence and treated as the confidential property of the other Party. The Parties will not, except in the due performance of its duties or the enforcement of its rights under this Agreement, disclose any of the foregoing to any person, unless specifically authorized to do so in writing by the other Party or unless required by law, including, for the avoidance of doubt, any public filings made by Seller as a public company. The provisions of this Section shall survive the termination of this Agreement.

35. **Time of the Essence.** It is agreed that time is of the essence in all matters herein.

36. **Service of Process.** Seller agrees that Purchaser may affect service of process upon Seller by regular mail at the address set forth herein or at such other address as may be reflected in the records of Purchaser, or at the option of Purchaser by service upon Seller's agent for the service of process.

37. **Headings.** The title of this Agreement and the subject headings of the sections and subsections of this Agreement are included for the purposes of convenience and shall not affect the construction of interpretation of any of its provisions.

38. **Construction.** This Agreement and all agreements relating to the subject matter hereof are the product of negotiation and preparation by and among each party and its respective attorneys and shall be construed accordingly.

IN WITNESS WHEREOF the Parties hereto have affixed their hands and seals on the day and year first above written.

SELLER: bluebird bio, inc.

By: /s/ Christopher Krawtschuk
Name: Christopher Krawtschuk
Title: Chief Financial Officer

PURCHASER: Alterna Capital Solutions LLC

By: /s/ Roger Allen
Name: Roger Allen
Title: Chief Operating Officer

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**SCHEDULE A
PERMITTED LIENS**

[Intentionally Omitted]

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EXHIBIT A

GENERAL RELEASE

[Intentionally Omitted]

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EXHIBIT B

[Intentionally Omitted]