

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): November 28, 2023

Incannex Healthcare Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other Jurisdiction of Incorporation)	001-41106 (Commission File Number)	93-2403210 (IRS Employer Identification No.)
Suite 105, 8 Century Circuit Norwest, NSW 2153 Australia (Address of Principal Executive Offices)		Not applicable (Zip Code)

Registrant's Telephone Number, including Area Code: +61 425 703 805

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

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

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

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

Title of each class	Trading Symbol	Name of exchange on which registered
Common Stock, \$0.0001 par value per share	IXHL	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.

Explanatory Note

Completion of Redomiciliation

On November 28, 2023 (“Effective Date”), the redomiciliation (“Redomiciliation”) of Incannex Healthcare Limited, an Australian corporation (“Incannex Australia”), was implemented under Australian law in accordance with the Scheme Implementation Deed, as amended and restated on September 13, 2023, between Incannex Australia and Incannex Healthcare Inc., a Delaware corporation (“Incannex Delaware”). As a result of the Redomiciliation, Incannex Australia became a wholly-owned subsidiary of Incannex Delaware, which is the new ultimate parent company. The terms “we,” “our,” “us” refer to Incannex Australia prior to the Effective Date and Incannex Delaware after the Effective Date.

The Redomiciliation was effected pursuant to a statutory Scheme of Arrangement under Australian law (the “Scheme”). Upon completion of the Redomiciliation, our primary listing changed from the Australian Securities Exchange (“ASX”) to the Nasdaq Global Market (“Nasdaq”).

In connection with the Scheme:

- holders of ordinary shares of Incannex Australia received one share of common stock in Incannex Delaware for every 100 ordinary shares of Incannex Australia held on the Scheme record date;
- holders of options of Incannex Australia received one option in Incannex Delaware for every 100 options in Incannex Australia held on the Scheme record date; and
- holders of American Depositary Shares (“ADSs”), with each ADS representing 25 ordinary shares of Incannex Australia, received one share of common stock of Incannex Delaware for every 4 ADSs held on the Scheme record date.

The shares of common stock and options issued by Incannex Delaware upon implementation of the Scheme were exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 3(a)(10) thereof.

Prior to the Redomiciliation, Incannex Australia’s ordinary shares were registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and ADSs representing its ordinary shares were listed on the Nasdaq Global Market (“Nasdaq”). Incannex Australia’s ADSs were suspended from trading on Nasdaq prior to the start of trading on the Effective Date and, following the Effective Date, will no longer trade on Nasdaq.

Pursuant to Rule 12g-3(a) under the Exchange Act, as of the Effective Date:

- Incannex Delaware is the successor issuer to Incannex Australia;
- Incannex Delaware’s shares of common stock are deemed to be registered under Section 12(b) of the Exchange Act; and
- Incannex Delaware is subject to the periodic and current reporting requirements of the Exchange Act and the rules and regulations promulgated thereunder. Incannex Delaware hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act.

Incannex Delaware's shares of common stock are expected to commence trading on Nasdaq at the start of trading on November 30, 2023, or as soon as possible thereafter, under the symbol "IXHL", the same symbol under which Incannex Australia's ADSs were traded on Nasdaq prior to the Effective Date. The CUSIP for Incannex Delaware's shares common stock is 45333F109.

Nasdaq has filed a Form 25 with the SEC to remove Incannex Australia's ADS listing on Nasdaq. Incannex Australia has filed a Form 15 with the Securities and Exchange Commission ("SEC") to terminate the registration under the Exchange Act of Incannex Australia's ordinary shares and to suspend its reporting obligations under Sections 13 and 15(d) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

The information included under the Explanatory Note of this Current Report on Form 8-K is incorporated by reference to this Item 1.01

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information included under the Explanatory Note of this Current Report on Form 8-K is incorporated by reference to this Item 3.01

Item 3.02 Unregistered Sales of Equity Securities.

The information included under the Explanatory Note of this Current Report on Form 8-K is incorporated by reference to this Item 3.02.

Item 3.03 Material Modification to Rights of Security Holders.

The information included under the Explanatory Note, Item 5.03 and Item 8.01 of this Current Report on Form 8-K is incorporated by reference to this Item 3.03.

Item 5.01 Changes in Control of Registrant.

The information included under the Explanatory Note and Item 8.01 of this Current Report on Form 8-K is incorporated by reference to this Item 5.01

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

Directors and Executive Officers

Below is a list of the names, ages, positions and a brief summary of business experience of the individuals who serve as Incannex Delaware's directors and executive officers as of November 28, 2023.

Name	Age	Position
Joel Latham	34	President and Chief Executive Officer, Director (principal executive officer)
Troy Valentine	50	Chairman
Peter Widdows	57	Director
George Anastassov	60	Director
Robert Clark	63	Director
Madhukar Bhalla	65	Secretary and Chief Financial Officer (principal financial officer)
Joseph Swan	32	Treasurer and Controller (principal accounting officer)
Lekhram Changoer	57	Chief Technology Officer

Biographical information with respect to the directors and officers above can be found under Item 6A of the Annual Report on Form 20-F filed by Incannex Australia with the SEC on October 31, 2023, which information is incorporated by reference to this Item 5.02.

Classified Board of Directors

Incannex Delaware's Certificate of Incorporation provides that the Board is divided into three classes with staggered three-year terms. Only one class of directors is elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective terms.

The classes of the Board are designated as follows:

- Peter Widdows is a Class I director, and his initial term will expire at the annual meeting of stockholders to be held in 2024;
- George Anastassov and Robert Clark are Class II directors, and their initial terms will expire at the annual meeting of stockholders to be held in 2025; and
- Joel Latham and Troy Valentine are Class III directors, and their terms will expire at the annual meeting of stockholders to be held in 2026.

Board Committees

The Board currently has, and appoints the members of, a standing Audit Committee and Compensation Committee. Each of those committees has a written charter approved by the Board. The current charter for each standing Board committee will be posted under the section "Corporate Governance" of the Incannex Delaware's website, www.incannex.com.

Members of the committees are as follows:

Audit Committee: Peter Widdows (Chair), Robert Clark and Troy Valentine

Compensation Committee: Peter Widdows (Chair), Robert Clark and Troy Valentine

Stock Incentive Plan

Incannex Delaware has adopted an incentive plan, the Incannex Healthcare Inc. 2023 Equity Incentive Plan, which is attached hereto as Exhibit 10.2 and incorporated herein by reference.

Incannex Delaware assumed Incannex Australia's obligations with respect to the settlement of incentive options that were previously issued by Incannex Australia.

Indemnification Agreements

Incannex Delaware has entered into indemnification agreements with each of the directors and executive officers of Incannex Delaware. These agreements provide for the indemnification by Incannex Delaware of these persons against certain liabilities that may arise by reason of their status or service as a director or officer or in such other capacity and to advance expenses incurred as a result of certain proceedings, to the fullest extent provided by law.

The foregoing description of the indemnification agreements is qualified in its entirety by reference to the text of such agreement filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference to this Item 5.02.

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

In connection with the Redomiciliation, the rights of our shareholders are no longer governed by Incannex Australia's organizational documents and instead are now governed by Incannex Delaware's Amended and Restated Certificate of Incorporation and its amended and restated bylaws (the "Bylaws"), which are attached hereto as Exhibits 3.1 and 3.2 and incorporated herein by reference.

A summary of the material terms of the Amended and Restated Certificate of Incorporation and the Bylaws are attached hereto as Exhibit 99.1 and incorporated herein by reference.

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

Incannex Delaware has adopted a Code of Conduct (the "Code"), which applies to all directors, officers and employees of Incannex Delaware and its subsidiaries.

The foregoing description of the Code is qualified in its entirety by reference to the text of the Code, which is filed as Exhibit 14.1 to this Current Report on Form 8-K and incorporated by reference to this Item 5.05. The Code will be made available on Incannex Delaware's website at www.incannex.com.

Item 8.01 Other Events.***Press Release***

On November 28, 2023 (U.S. time), Incannex Delaware issued a press release announcing the completion of the Redomiciliation and related information. A copy of the press release is filed as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference to this Item 8.01.

Successor Issuer

Pursuant to Rule 12g-3(a) under the Exchange Act, Incannex Delaware is the successor issuer to Incannex Australia. As a result, Incannex Delaware's shares of common stock are deemed to be registered under Section 12(b) of the Exchange Act and Incannex Delaware is subject to the periodic and current reporting requirements of the Exchange Act and the rules and regulations promulgated thereunder. Incannex Delaware hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act.

Transfer Agent and Registrar

The transfer agent and registrar for Incannex Delaware's shares of common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is 150 Royall Street, Canton, Massachusetts 02021.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Deed of Amendment and Restatement to Scheme Implementation Deed, dated September 13, 2023, between Incannex Healthcare Limited and Incannex Healthcare Inc.</u>
3.1	<u>Amended and Restated Certificate of Incorporation, as filed with the Secretary of State of the State of Delaware on July 31, 2023</u>
3.2	<u>Amended and Restated Bylaws, dated November 20, 2023</u>
10.1	<u>Form of Indemnification Agreement</u>
10.2	<u>Incannex Healthcare Inc. 2023 Equity Incentive Plan</u>
14.1	<u>Code of Conduct</u>
99.1	<u>Description of Capital Stock</u>
99.2	<u>Press release, dated November 28, 2023</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

Incannex Healthcare Inc.

Date: November 29, 2023

/s/ Joel Latham

Name: Joel Latham

Title: Chief Executive Officer and President

Deed of Amendment and Restatement

between

Incannex Healthcare Limited
ACN 096 635 246
(Incannex)

and

Incannex Healthcare Inc.
A company incorporated in Delaware, United States of America
(US Holdco)

DETAILS

Date 13 September 2023

Parties **Incannex**
Name Incannex Healthcare Limited
ACN 096 635 246
Address Level 23, Rialto South Tower, 525 Collins Street, Melbourne
VIC 3000
Email
Attention Troy Valentine, Chairman

With a copy to:
David Schiavello, Partner
Thomson Geer
Level 23, 525 Collins Street, Melbourne VIC 3000

US Holdco
Name Incannex Healthcare Inc. (a company incorporated in Delaware, USA)
Address 18 East 50th Street, 5th Floor, New York, NY 10022
Email
Attention Joel Latham, Chief Executive Officer

With a copy to:
Andrew Reilly, Partner
Rimon Law
Level 2, 50 Bridge Street, Sydney NSW 2000 a

BACKGROUND

- A Incannex and US HoldCo entered into a scheme implementation deed on 10 July 2023 (**SID**).
- B On or around the time US HoldCo entered into the SID, US HoldCo also entered into a share scheme deed poll (in the form set out in schedule 4 of the SID) (**SSDP**) and an option scheme deed poll (in the form set out in schedule 6 of the SID) (**OSDP** and collectively with the SSDP, the **DPs**).
- C The SID may be varied in accordance with clause 11.1 of the SID and each DP may be varied in accordance with clause 7.7 of that DP.
- D The parties have agreed to amend and restate the SID and to amend each DP, in each case on the terms of this deed.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this deed:

Amended OSDP the option scheme deed poll in the form set out in schedule 4 of the SID as amended and restated by this deed (or such other form agreed to between Incannex and Incannex US in accordance with the SID).

Amended SSDP the share scheme deed poll in the form set out in schedule 2 of the SID as amended and restated by this deed (or such other form agreed to between Incannex and Incannex US in accordance with the SID).

OSDP Effective Date means the date on which US HoldCo enters into the Amended OSDP.

Second Court Date has the meaning given to that term in the SID as amended and restated in accordance with this deed.

SID Effective Date means the date of this deed.

SSDP Effective Date means the date on which US HoldCo enters into the Amended SSDP.

1.2 Interpretation

Clause 1.2 of the SID applies to this deed.

1.3 Deed components

This deed includes any appendix.

2 Amendments

2.1 Amendment and Restatement of the SID

The parties agree that on and from the SID Effective Date, the SID is amended in the manner reflected by, and restated in the form of, Appendix 1.

2.2 Amendment of the SSDP

The parties agree that on and from the SSDP Effective Date, the SSDP will be amended in the manner reflected by the Amended SSDP provided that the SSDP Effective Date is before the Second Court Date.

2.3 Amendment of the OSDP

The parties agree that on and from the OSDP Effective Date, the OSDP will be amended in the manner reflected by the Amended OSDP provided that the OSDP Effective Date is before the Second Court Date.

2.4 Amendments not to affect validity, rights, obligations

- (a) This clause 2 is intended only to vary the SID and the DPs and not to terminate, discharge, rescind or replace the SID or any DP.
- (b) The amendments to the SID and DPs do not affect the validity or enforceability of the SID or any DP.
- (c) Nothing in this deed:
 - (i) prejudices or adversely affects any right, power authority, discretion or remedy which arose or arises under or in connection with the SID before the SID Effective Date, the SSDP before the SSDP Effective Date or the OSDP before the OSDP Effective Date; or
 - (ii) discharges, releases or otherwise affects any liability or obligation which arose or arises under or in connection with the SID before the SID Effective Date, the SSDP before the SSDP Effective Date or the OSDP before the OSDP Effective Date.

2.5 Confirmation

- (a) On and from the SID Effective Date, each party is bound by the SID as amended and restated by this deed.
- (b) On and from the SSDP Effective Date, Incannex US will be bound by the Amended SSDP.
- (c) On and from the OSDP Effective Date, Incannex US will be bound by the Amended OSDP.

2.6 Acknowledgement

Each party acknowledges that this deed is entered into in accordance with the SID and the DPs.

3 General

3.1 Governing law and jurisdiction

This deed is governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

3.2 Costs

Each party must pay its own costs and expenses for preparing, negotiating, executing and completing this deed and any document related to this deed.

3.3 Further assurance

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

3.4 Execution of separate documents

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one deed.

3.5 Variation

No variation of this deed will be of any force or effect unless it is in writing and signed by each party to this deed.

Executed as a deed:

Executed as a deed by **Incannex Healthcare Limited** ACN 096 635 246 in accordance with section 127 of the *Corporations Act 2001* (Cth):

/s/ Joel Latham
Director

Joel Latham
Name of Director
BLOCK LETTERS

/s/ Madhukar Bhalla
*Director/*Company Secretary

Madhukar Bhalla
Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed by an authorised signatory of **Incannex Healthcare Inc.:**

/s/ Joel Latham
Signature of authorised person

JOEL LATHAM
Name of authorised person
BLOCK LETTERS

THOMSON GEER

Deed of Amendment and Restatement

APPENDIX 1 – AMENDED AND RESTATED SID

THOMSON GEER

Deed of Amendment and Restatement

Level 23, Rialto South Tower
525 Collins Street
Melbourne VIC 3000 Australia
T +61 3 8080 3500 | F +61 3 8080 3599

Scheme Implementation Deed

between

Incannex Healthcare Limited

ACN 096 635 246

(**Incannex**)

and

Incannex Healthcare Inc.

A company incorporated in Delaware, United States of America

(**US Holdco**)

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DETAILS

Date 10 July 2023
(as amended and restated on 13 September 2023)

Parties **Incannex**
Name Incannex Healthcare Limited
ACN 096 635 246
Address Level 23, Rialto South Tower, 525 Collins Street, Melbourne
VIC 3000
Email
Attention Troy Valentine, Chairman

With a copy to:
David Schiavello, Partner
Thomson Geer
Level 23, 525 Collins Street, Melbourne VIC 3000

US Holdco
Name Incannex Healthcare Inc. (a company incorporated in Delaware, USA)
Address 18 East 50th Street, 5th Floor, New York, NY 10022
Email
Attention Joel Latham, Chief Executive Officer

With a copy to:
Andrew Reilly, Partner
Rimon Law
Level 2, 50 Bridge Street, Sydney NSW 2000

Background

- A Incannex is an Australian public company listed on ASX (as its primary listing) and on NASDAQ (as its secondary listing).
- B The Incannex securities quoted for trading on ASX are Incannex Shares and the Incannex securities quoted for trading on NASDAQ are ADSs.
- C US Holdco is a company incorporated in the State of Delaware in the United States and which has been established for the purposes of effecting a re-domiciliation of Incannex to the United States.
- D Incannex wishes to effect the re-domiciliation by way of schemes of arrangement under Part 5.1 of the Corporations Act, being the Share Scheme and the Option Scheme.
- E US Holdco will acquire all of the Scheme Shares in consideration for US Holdco issuing US Holdco Shares pursuant to this deed, the Share Scheme and the Share Scheme Deed Poll.
- F All Scheme Options will be cancelled in consideration for US Holdco issuing US Holdco Options pursuant to this deed, the Option Scheme and the Option Scheme Deed Poll.
- G This deed is entered into to record and give effect to the terms and conditions on which US Holdco and Incannex propose to implement the Share Scheme and the Option Scheme.

Agreed Terms

1 Interpretation

1.1 Definitions

In this deed the following terms shall bear the following meanings:

ADS means an American Depositary Share.

ADS Depository means Deutsche Bank Trust Company Americas.

ADS Holder means a holder of Incannex ADSs.

Affiliate means, in relation to any specified person (other than a natural person), any other person (which shall include a natural person) directly or indirectly Controlling or Controlled by such specified person or under direct or indirect common control with such specified person.

Agreed Public Announcement means an announcement of Incannex, released by Incannex on ASX (with a copy to be filed with the SEC) on 10 July 2023 pursuant to clauses 6.2(a) and 8.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires.

Business Day means a business day as defined in the Listing Rules and, to the extent any action must be taken in relation to NASDAQ, a day on which NASDAQ is operating but excludes a day that is a Saturday, Sunday, bank holiday or public holiday in Melbourne, Victoria or New York, United States of America.

Conditions Precedent means the conditions precedent to the Share Scheme in clause 3.1 and the conditions precedent to the Option Scheme in clause 3.2.

Control has the meaning given to that term in section 50AA of the Corporations Act and Controlling and Controlled have the corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth).

Corporations Regulations means the *Corporations Regulations 2001* (Cth).

Court means a court of competent jurisdiction under the Corporations Act.

Court Documents means the documents that Incannex determines (acting reasonably) are required for the purposes of appearing at a hearing of the Court in connection with either or both of the Schemes, and which may include originating process, affidavits, submissions and draft minutes of Court orders.

Effect means, when used in relation to a Scheme, the coming into effect pursuant to section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to that Scheme and **Effective** has a corresponding meaning.

Effective Date means the date the Share Scheme or the Option Scheme (as applicable) becomes Effective.

Eligible Jurisdictions means Australia, Canada, Germany, Hong Kong, Indonesia, Italy, Japan, Netherlands, New Zealand, Philippines, Singapore, United Kingdom and the United States and such other jurisdictions as agreed in writing between Incannex and Incannex US from time to time.

Encumbrance means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement and any other security arrangement of any kind given or created and including any possessory lien in the ordinary course of business whether arising by law or contract.

End Date means 29 February 2024, or such later date as agreed to in writing between the parties from time to time.

Excluded Shareholder means any member of the US Holdco Group.

Excluded Shares means any Incannex Shares held by an Excluded Shareholder.

Excluded Small Parcel Holder means a Small Parcel Holder who has made a valid election referred to in clause 4.5 to not participate in the Sale Facility and will not be treated as a Small Parcel Holder.

Execution Date means the date of this deed.

First Court Date means the first day on which an application is made to the Court for an order under section 411(1) of the Corporations Act approving the convening of the Share Scheme Meeting and the Option Scheme Meeting.

GST has the meaning given to it in the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation Date means the fifth Business Day after the Record Date, or such other date agreed to in writing by the parties.

Incannex ADS means an ADS, representing 25 Incannex Shares and which trade on NASDAQ under the ticker code "IXHL".

Incannex Board means the board of directors of Incannex from time to time.

Incannex Director means a director of Incannex from time to time.

Incannex Group means Incannex and its Subsidiaries.

Incannex Information means all information included in the Scheme Booklet other than US Holdco Information and the Independent Expert's Report.

Incannex Option means an option issued by Incannex to acquire an Incannex Share.

Incannex Option Register means the register of Incannex optionholders maintained by or on behalf of Incannex in accordance with the Corporations Act.

Incannex Optionholder means a person who is registered in the Incannex Option Register as the holder of one or more Incannex Options from time to time.

Incannex Share means a fully paid ordinary share issued in the capital of Incannex.

Incannex Share Register means the register of Incannex shareholders maintained by or on behalf of Incannex in accordance with the Corporations Act.

Incannex Shareholder means a person who is registered in the Incannex Share Register as the holder of one or more Incannex Shares, from time to time.

Independent Expert means a person to be appointed by Incannex to prepare the Independent Expert's Report.

Independent Expert's Report means the independent expert's report prepared by the Independent Expert for inclusion in the Scheme Booklet, which states the Independent Expert's opinion in relation to whether:

- (a) the Share Scheme is in the best interest of Incannex Shareholders; and
- (b) the Option Scheme is in the best interest of Incannex Optionholders, including any updates or amendments to this report made by the Independent Expert.

Ineligible Foreign Shareholder means any Share Scheme Participant whose address shown on the Incannex Share Register is a place outside the Eligible Jurisdictions, unless, no less than three Business Days prior to the Share Scheme Meeting, Incannex and US HoldCo agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Incannex Shareholder with the US HoldCo Shares when the Share Scheme becomes Effective.

Ineligible Foreign Optionholder means any Option Scheme Participant whose address shown on the Incannex Option Register is a place outside the Eligible Jurisdictions, unless, no less than three Business Days prior to the Option Scheme Meeting, Incannex and US HoldCo agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Incannex Optionholder with the US HoldCo Options when the Option Scheme becomes Effective.

Listing Rules means the official listing rules of the ASX.

Marketable Parcel has the meaning given to that term in the Listing Rules, with the closing price on the last day of Incannex Shares trading on ASX used to determine this.

NASDAQ means the NASDAQ Stock Market LLC.

Option Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Incannex and the Option Scheme Participants, the form of which is set out in Schedule 3 (as amended by the parties in writing from time to time), together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by US Holdco and Incannex.

Option Scheme Consideration means the consideration to be provided by US Holdco to each Option Scheme Participant (other than Ineligible Foreign Optionholders) for the cancellation of each Scheme Option under the Option Scheme as defined in clause 5.3(a).

Option Scheme Deed Poll means the deed poll to be entered into by US Holdco the form of which is set out in Schedule 4 or in such other form as agreed in writing between Incannex and US Holdco.

Option Scheme Meeting means the meeting of Incannex Optionholders convened by the Court in relation to the Option Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

Option Scheme Participant means each person who is an Incannex Optionholder on the Record Date.

Record Date means 7:00pm on the second Business Day following the Effective Date, or such other date (after the Effective Date) as Incannex and US Holdco may agree in writing.

Regulator's Draft has the meaning given in clause 6.2(e)(i).

Regulatory Authority includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute;
- (d) any stock or securities exchange;
- (e) in particular, ASX, ASIC, SEC and NASDAQ; and
- (f) any representative of any of the above.

Relevant Interest has the meaning given to that term in the Corporations Act.

Representative means:

- (a) in relation to Incannex, any director, officer or employee of any member of Incannex and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Incannex in relation to the Transaction; and
- (b) in relation to US Holdco, any director, officer or employee of any member of US Holdco and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to US Holdco in relation to the Transaction.

RG 60 means Regulatory Guide 60 issued by ASIC in September 2020.

RG 112 means Regulatory Guide 112 issued by ASIC on 30 March 2011, as amended.

Sale Agent means a person appointed by US Holdco to administer the Sale Facility and to sell or arrange the sale of US Holdco Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Shareholders or Small Parcel Holders (excluding Excluded Small Parcel Holders) under the terms of the Share Scheme.

Sale Election Form means the form pursuant to which Small Parcel Holders may elect not to participate in the Sale Facility and be treated as Excluded Small Parcel Holders as contemplated in clause 4.5.

Sale Facility means the facility to be administered by the Sale Agent pursuant to which Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) will have their Share Scheme Consideration sold on their behalf and have the net proceeds of sale remitted to them under the terms of the Share Scheme.

Scheme Booklet means the information booklet to be despatched to all Incannex Shareholders and Incannex Optionholders and approved by the Court in connection with the Schemes, including the Share Scheme, the Option Scheme, the explanatory statement in respect of the Schemes, the Independent Expert's Report and the notice of meeting.

Scheme Options means all of the Incannex Options on issue on the Record Date.

Scheme Shares means all of the Incannex Shares on issue on the Record Date other than Excluded Shares.

Schemes means the Share Scheme and the Option Scheme.

SEC means the U.S. Securities and Exchange Commission.

Second Court Date means the first day on which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Share Scheme and Option Scheme is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

Share Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Incannex and Incannex Shareholders, the form of which is set out in Schedule 1, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by US Holdco and Incannex.

Share Scheme Consideration means such number of US Holdco Shares for each Scheme Share held by Share Scheme Participants at 7:00pm on the Record Date as described in clause 4.3.

Share Scheme Deed Poll means the deed poll to be entered into by US Holdco, the form of which is set out in Schedule 2 or in such other form as agreed in writing between Incannex and US Holdco.

Share Scheme Meeting means the meeting of Incannex Shareholders convened by the Court in relation to the Share Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

Share Scheme Participant means each person who is an Incannex Shareholder on the Record Date (other than Excluded Shareholders).

Small Parcel Holder means a Share Scheme Participant who is not an Ineligible Foreign Shareholder and who holds less than a Marketable Parcel of Incannex Shares on the Record Date.

Subsidiaries has the meaning given to that term in section 9 of the Corporations Act.

Trading Day means a trading day as defined in the Listing Rules.

Transaction means:

- (a) the acquisition by US Holdco of all of the Scheme Shares in consideration for US Holdco issuing US Holdco Shares pursuant to this deed, the Share Scheme and the Share Scheme Deed Poll; and
- (b) the cancellation of the Scheme Options in consideration for US Holdco issuing US Holdco Options pursuant to this deed, the Option Scheme and the Option Scheme Deed Poll.

US Holdco means Incannex Healthcare Inc., a corporation incorporated in the State of Delaware, United States of America and whose principal business address is 18 East 50th Street, 5th Floor, New York, NY 10022.

US Holdco Board means the board of directors of US Holdco.

US Holdco Group means US Holdco and its Subsidiaries.

US Holdco Information means the information that US Holdco provides to Incannex under clause 6.3(a) for inclusion in the Scheme Booklet.

US Holdco Option means an option issued by US Holdco to acquire a US Holdco Share.

US Holdco Option Register means the register of US Holdco optionholders maintained by or on behalf US Holdco and maintained in accordance with the Delaware General Corporation Law.

US Holdco Optionholder means a person who is registered in US Holdco Option Register as the holder of one or more US Holdco Options, from time to time.

US Holdco Share means a share of common stock of US Holdco.

US Holdco Share Register means the register of US Holdco shareholders maintained by or on behalf US Holdco and maintained in accordance with the Delaware General Corporation Law.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this deed, and a reference to this deed includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

- (e) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (f) a reference to US\$ or USD is to the lawful currency of the United States;
- (g) a reference to time is to time in Melbourne, Victoria, unless otherwise noted;
- (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the Corporations Act and not otherwise defined in this deed has the meaning given to it in the Corporations Act;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Knowledge

Where this deed makes reference to the knowledge or awareness of a party, or any similar reference, such knowledge or awareness will be taken to mean the actual knowledge and awareness of the party, but will not include any deemed or imputed knowledge of the party.

2 Agreement to propose and implement Schemes

2.1 Incannex to propose Share Scheme and Option Scheme

- (a) Incannex agrees to propose the Share Scheme and the Option Scheme on and subject to the terms and conditions of this deed.
- (b) US Holdco agrees to assist Incannex to propose the Share Scheme and Option Scheme on and subject to the terms and conditions of this deed.

2.2 Agreement to implement Transaction

The parties agree to implement the Transaction on the terms and conditions of this deed.

3 Conditions Precedent

3.1 Conditions Precedent to implementation of the Share Scheme

Subject to this clause 3, the Share Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Share Scheme are not binding, unless each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **Regulatory Approvals:** before 5:00pm on the Business Day before the Second Court Date in relation to the Share Scheme:
 - (i) **ASIC:** ASIC has issued or provided all such reliefs, confirmations, consents, approvals, qualifications or exemptions, or does such other acts which the parties agree are reasonably necessary or desirable to implement the Share Scheme and such reliefs, waivers, confirmations, consents, approvals, qualifications or exemptions or other acts (as the case may be) have not been withdrawn, suspended, varied or revoked;
 - (ii) **ASX:** ASX has issued or provided all such reliefs, confirmations, consents, approvals, waivers or does such other acts which the parties agree are reasonably necessary to implement the Share Scheme and such reliefs, confirmations, consents, approvals, waivers or other acts (as the case may be) have not been withdrawn, suspended, varied or revoked;
 - (iii) **Other:** all other regulatory approvals, waivers, consents, exemptions or declarations that are necessary or required by law, or by any Regulatory Authority, to implement the Share Scheme on the basis set out in this deed, to complete the transactions contemplated by this deed being granted, given, made or obtained and those regulatory approvals or waivers not being withdrawn, cancelled, revoked or varied in a manner that is materially adverse to the parties (or subject to any notice, intimation or indication of intention to do any such thing);
- (b) **Incannex Shareholder Approval:** Incannex Shareholders approve the Share Scheme at the Share Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act, as modified under section 411(4)(a)(ii)(A) of the Corporations Act or otherwise;
- (c) **Court Approval of Share Scheme:** the Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act, in a manner that satisfies section 3(a)(10) of the US Securities Act of 1933 with respect to all securities to be offered, issued or sold by US Holdco under the Share Scheme;
- (d) **Share Scheme Orders lodged with ASIC:** an office copy of the Court order approving the Share Scheme under section 411(10) of the Corporations Act is lodged with ASIC;
- (e) **Restraining Orders:** as at 8:00am on the Second Court Date, no judgement, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition or other order or decision has been issued, made, entered, enacted, promulgated or enforced by any court of competent jurisdiction or any Regulatory Authority remains in effect that prohibits, restricts, makes illegal or restrains the completion of the Share Scheme, and there is no other legal restraint or prohibition, preventing the consummation of any aspect of the Share Scheme on the Implementation Date;
- (f) **Independent Expert Report:** the Independent Expert provides a report to Incannex that concludes that the Share Scheme is in the best interests of Incannex Shareholders on or before the time when the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert not withdrawing or adversely modifying that conclusion before 8:00am on the Second Court Date; and
- (g) **NASDAQ Listing:** prior to 8:00am on the Second Court Date, Nasdaq has confirmed it has no objections to listing on NASDAQ of US Holdco Shares, subject to official notice of issuance following implementation and any customary conditions.

3.2 Conditions Precedent to implementation of the Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme are not binding, unless each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **Regulatory Approvals:** before 5:00pm on the Business Day before the Second Court Date in relation to the Option Scheme:
- (i) **ASIC:** ASIC has issued or provided all such relief, confirmations, consents, approvals, qualifications or exemptions, or does such other acts which are necessary to implement the Option Scheme on the basis set out in this deed and complete the transactions contemplated by this deed and such relief, waivers, confirmations, consents, approvals, qualifications or exemptions or other acts (as the case may be) have not been withdrawn, suspended, varied or revoked;
 - (ii) **ASX:** ASX has issued or provided all such relief, confirmations, consents, approvals, waivers or does such other acts which are necessary to implement the Option Scheme on the basis set out in this deed and complete the transactions contemplated by this deed and such relief, confirmations, consents, approvals, waivers or other acts (as the case may be) have not been withdrawn, suspended, varied or revoked;
 - (iii) **Other approvals:** all other regulatory approvals, waivers, consents, exemptions or declarations that are necessary or required by law, or by any Regulatory Authority, to implement the Option Scheme on the basis set out in this deed, to complete the transactions contemplated by this deed being granted, given, made or obtained and those regulatory approvals or waivers not being withdrawn, cancelled, revoked or varied in a manner that is materially adverse to the parties (or subject to any notice, intimation or indication of intention to do any such thing).
- (b) **Incannex Optionholder Approval:** Incannex Optionholders approve the Option Scheme at the Option Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act;
- (c) **Court Approval of Option Scheme:** the Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act, in a manner that satisfies section 3(a)(10) of the US Securities Act of 1933 with respect to all securities to be offered, issued or sold by US Holdco under the Option Scheme;
- (d) **Incannex Shareholder Approval of Share Scheme:** Incannex Shareholders approve the Share Scheme at the Share Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act, as modified under section 411(4)(a)(ii)(A) of the Corporations Act or otherwise;
- (e) **Court Approval of Share Scheme:** the Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act, in a manner that satisfies section 3(a)(10) of the US Securities Act of 1933 with respect to all securities to be offered, issued or sold by US Holdco under the Share Scheme;
- (f) **Option Scheme Orders lodged with ASIC:** an office copy of the Court order approving the Option Scheme under section 411(10) of the Corporations Act is lodged with ASIC;
- (g) **Restraining Orders:** as at 8:00am on the Second Court Date, no judgement, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition or other order or decision has been issued, made, entered, enacted, promulgated or enforced by any court of competent jurisdiction or any Regulatory Authority remains in effect that prohibits, restricts, makes illegal or restrains the completion of the Option Scheme, and there is no other legal restraint or prohibition, preventing the consummation of any aspect of the Option Scheme on the Implementation Date; and

- (h) **Independent Expert Report:** the Independent Expert provides a report to Incannex that concludes that the Option Scheme is in the best interests of Incannex Optionholders on or before the time when the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert not withdrawing or adversely modifying that conclusion before 8:00am on the Second Court Date.

3.3 Reasonable endeavours to satisfy Conditions Precedent

Each of the parties will use its reasonable endeavours to procure that:

- (a) each of the Conditions Precedent is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence within the control of Incannex or US Holdco (as the context requires) or their Affiliates that would prevent the Conditions Precedent being satisfied.

3.4 Waiver of Conditions Precedent

- (a) In relation to the Share Scheme, the Conditions Precedent in:
- (i) clauses 3.1(a)(i) and 3.1(a)(ii) (**ASIC and ASX Regulatory Approvals**), 3.1(b) (**Incannex Shareholder Approval**), 3.1(c) (**Court Approval of Share Scheme**), 3.1(d) (**Share Scheme Orders Lodged with ASIC**), 3.1(e) (**Restraining Orders**) and 3.1(g) (**NASDAQ Listing**) are for the benefit of both parties and cannot be waived;
- (ii) clause 3.1(a)(iii) (**Other Regulatory Approvals**) is for the benefit of both parties, and any breach or non-fulfilment of such Condition Precedent may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion; and
- (iii) clause 3.1(f) (**Independent Expert Report**) is for the sole benefit of, and any breach or non-fulfilment of such Condition Precedent may only be waived with the written consent of, Incannex.
- (b) In relation to the Option Scheme, the Conditions Precedent in:
- (i) clauses 3.2(a)(i) and 3.2(a)(ii) (**ASIC and ASX Regulatory Approvals**), 3.2(b) (**Incannex Optionholder Approval**), 3.2(c) (**Court Approval of Option Scheme**), 3.2(d) (**Incannex Shareholder Approval of Share Scheme**), 3.2(f) (**Option Scheme Orders lodged with ASIC**) and 3.2(g) (**Restraining Orders**) are for the benefit of both parties and cannot be waived;
- (ii) clause 3.2(a)(iii) (**Other Regulatory Approvals**) is for the benefit of both parties, and any breach or non-fulfilment of such Condition Precedent may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion;
- (iii) clause 3.2(e) (**Court Approval of Share Scheme**) is for the benefit of both parties, and any breach or non-fulfilment of such Condition Precedent may only be waived with the written consent of both parties, which consent either party may give or withhold in its absolute discretion; and
- (iv) clause 3.2(h) (**Independent Expert Report**) is for the sole benefit of, and any breach or non-fulfilment of such Condition Precedent may only be waived with the written consent of, Incannex.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant this clause 3.4 may do so in its absolute discretion subject to the provision of written notice to the other party. Any such waiver by a party for whose benefit the relevant Condition Precedent applies must take place on or prior to 8:00am on the Second Court Date.

- (d) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver precludes the party from suing another party for any breach of this deed that resulted in the breach or non-fulfilment of the Condition Precedent.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.5 Certificates in relation to Conditions Precedent

- (a) At the hearing at which the application for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme is considered by the Court, Incannex and US Holdco will provide a joint certificate to the Court confirming whether or not the Conditions Precedent in relation to the Share Scheme have been satisfied or waived in accordance with the terms of this deed.
- (b) At the hearing at which the application for an order under section 411(4)(b) of the Corporations Act approving the Option Scheme is considered by the Court, Incannex and US Holdco will provide a joint certificate to the Court confirming whether or not the Conditions Precedent in relation to the Option Scheme have been satisfied or waived in accordance with the terms of this deed.
- (c) The parties shall use their reasonable endeavours to agree drafts of the joint certificates for the Share Scheme and Option Scheme referred to in this clause 3.5 by 8:00am on the Second Court Date.

3.6 Conditions Precedent not met

If:

- (a) there is a non-fulfilment of a Condition Precedent which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this deed for the satisfaction of the Condition Precedent (and the non-fulfilment which would otherwise occur has not already been waived in accordance with this deed); or
- (c) it becomes more likely than not that the Share Scheme or Option Scheme will not become Effective by the End Date,

the parties must consult in good faith with a view to:

- (d) considering and if agreed, determining whether the Transaction may proceed by way of alternative means or methods;
- (e) considering and if agreed, extending the time or date for satisfaction of the relevant Condition Precedent or the End Date (as applicable); or
- (f) considering and if agreed, changing the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme and/or the Option Scheme or adjourning that application to another date agreed to in writing by the parties (being a date no later than five Business Days before the End Date).

3.7 Failure to agree

If the parties are unable to reach agreement under clause 3.6 within five Business Days (or any shorter period ending on 5:00pm on the day before the Second Court Date), either party may terminate this deed and such termination will be in accordance with clause 77.

4 Transaction steps – Share Scheme

4.1 Share Scheme

- (a) Incannex must, as soon as reasonably practicable after the Execution Date, propose the Share Scheme to Incannex Shareholders on and subject to the terms and conditions of this deed and the Share Scheme.
- (b) If the Share Scheme becomes Effective, on the Implementation Date:
 - (i) all of the Scheme Shares held by Share Scheme Participants on the Record Date will be transferred to US Holdco; and
 - (ii) in exchange, each Share Scheme Participant will receive the Share Scheme Consideration in accordance with the terms of this deed, the Share Scheme and the Share Scheme Deed Poll.

4.2 No amendment to the Share Scheme without consent

Incannex must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Share Scheme without the prior written consent of US Holdco.

4.3 Share Scheme Consideration

- (a) Subject to clauses 4.4 and 4.5, US Holdco undertakes and warrants to Incannex (in its own right and on behalf of each Share Scheme Participant) that in consideration of the transfer to US Holdco of each Scheme Share held by a Share Scheme Participant under the terms of the Share Scheme, US Holdco will (subject to the terms of this deed, the Share Scheme and the Share Scheme Deed Poll) on the Implementation Date:
 - (i) in the case of a Share Scheme Participant who holds Scheme Shares (other than the Australian custodian for the ADS Depository, an Ineligible Foreign Shareholder or a Small Parcel Holder (excluding an Excluded Small Parcel Holder)), issue one new US Holdco Share to that Share Scheme Participant for every 100 Scheme Shares held by that Share Scheme Participant on the Record Date;
 - (ii) in the case of a Share Scheme Participant who holds Scheme Shares on behalf of the ADS Depository (who itself holds Incannex Shares for the benefit of the ADS Holders), being the Australian custodian for the ADS Depository:
 - (A) issue one US Holdco Share to the ADS Depository for every 100 Scheme Shares held by the ADS Depository; and
 - (B) procure the ADS Depository to then, subject to compliance by the ADS Holder within the terms of the arrangements pursuant to which the ADS Depository acts as depository for ADS Holders, deliver (by way of exchange) such US Holdco Shares to the ADS Holders on the basis of one US Holdco Share for every four Incannex ADSs held by the ADS Holder on the Record Date; and
 - (iii) issue to the Sale Agent such number of US Holdco Shares in accordance with clauses 4.4 and 4.5 that Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) would otherwise have been entitled to.

- (b) Where the calculation of the number of US Holdco Shares to be issued to a particular Share Scheme Participant would result in the issue of a fraction of a US Holdco Share, then any such fractional entitlement will be rounded up to the nearest whole number of US Holdco Shares.
- (c) Incannex acknowledges that the undertaking by US Holdco in clause 4.3(a) is given to Incannex in its own right and in its capacity as trustee for each Share Scheme Participant.

4.4 Ineligible Foreign Shareholders

- (a) US Holdco will be under no obligation under this deed to allot or issue, and will not issue or procure to be issued any Share Scheme Consideration (in the form of US Holdco Shares) in the name of any Ineligible Foreign Shareholder and, instead, will issue US Holdco Shares to which the Ineligible Foreign Shareholder would have otherwise been entitled to the Sale Agent, in trust for the Ineligible Foreign Shareholder who is the beneficial owner thereof.
- (b) US Holdco will:
 - (i) instruct the Sale Agent, acting on behalf of the Ineligible Foreign Shareholders and not on behalf of Incannex or US Holdco, to sell all of the US Holdco Shares issued in the name of the Sale Agent pursuant to clause 4.4(a) in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith, as soon as reasonably practicable and in any event not more than eight weeks after the Implementation Date; and
 - (ii) remit, or procure to be remitted, to the Ineligible Foreign Shareholder the proceeds of its sale (on an averaged basis so that all Ineligible Foreign Shareholders receive the same price per US Holdco Share, subject to rounding to the nearest whole cent) in Australian dollars (after deducting any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges).

4.5 Small Parcel Holders

- (a) Subject to clause 4.5(b), US Holdco will be under no obligation under this deed to allot or issue, and will not issue or procure to be issued any Share Scheme Consideration (in the form of US Holdco Shares) in the name of any Small Parcel Holder and, instead, will issue US Holdco Shares to which the Small Parcel Holder would have otherwise been entitled to the Sale Agent, in trust for the Small Parcel Holder who is the beneficial owner thereof.
- (b) A Small Parcel Holder will be entitled, by providing a valid Sale Election Form on or before 7:00pm on the Effective Date, to elect not to participate in the Sale Facility and be treated as an Excluded Small Parcel Holder for the purposes of this clause 4.5. In the absence of such an election, each Small Parcel Holder will have any Share Scheme Consideration attributable to them under the Share Scheme issued to the Sale Agent pursuant to this clause 4.5.
- (c) US Holdco will:
 - (i) instruct the Sale Agent, acting on behalf of Small Parcel Holders (excluding Excluded Small Parcel Holders) and not on behalf of Incannex or US Holdco, to sell all of the US Holdco Shares issued in the name of the Sale Agent pursuant to clause 4.5(a) in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith, as soon as reasonably practicable and in any event not more than eight weeks after the Implementation Date; and
 - (ii) remit, or procure to be remitted, to the Small Parcel Holder (excluding Excluded Small Parcel Holders) the proceeds of its sale (on an averaged basis so that all Small Parcel Holders (excluding Excluded Small Parcel Holders) receive the same price per US Holdco Share, subject to rounding to the nearest whole cent) in Australian dollars (after deducting any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges).

4.6 US Holdco Shares to rank equally

US Holdco covenants in favour of Incannex (in its own right and on behalf of the Share Scheme Participants) that:

- (a) US Holdco Shares to be issued pursuant to the Share Scheme will be duly and validly authorised and will be of the same class of US Holdco Shares currently issued and outstanding and will rank equally in all respects with all issued and outstanding US Holdco Shares;
- (b) US Holdco Shares issued as Share Scheme Consideration will be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of US Holdco Shares on and after the Implementation Date;
- (c) each such US Holdco Share issued pursuant to the Share Scheme will be validly issued, fully paid, free from any Encumbrance or other third party rights and non-assessable; and
- (d) it will use reasonable endeavours to ensure that US Holdco Shares issued as Share Scheme Consideration will be listed for quotation on NASDAQ with effect from the Business Day after the Implementation Date (or such later date as NASDAQ may require).

4.7 Share Scheme Deed Poll

US Holdco covenants in favour of Incannex (in its own right and separately as trustee for each of the Share Scheme Participants) to execute and deliver to Incannex before 5:00pm on the Business Day prior to the First Court Date the Share Scheme Deed Poll.

5 Transaction Steps – Option Scheme

5.1 Option Scheme

- (a) Incannex must, as soon as reasonably practicable after the Execution Date, propose the Option Scheme to Incannex Optionholders on and subject to the terms and conditions of this deed and the Option Scheme.
- (b) If the Option Scheme becomes Effective, on the Implementation Date:
 - (i) all of the Scheme Options held by Option Scheme Participants on the Record Date will be cancelled; and
 - (ii) in consideration for the cancellation of the Scheme Options, each Option Scheme Participant that is not an Ineligible Foreign Optionholder will receive the Option Scheme Consideration in accordance with the terms of this deed, the Option Scheme and the Option Scheme Deed Poll.

5.2 No amendment to the Option Scheme without consent

Incannex must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of US Holdco.

5.3 Option Scheme Consideration

- (a) US Holdco undertakes and warrants to Incannex (in its own right and on behalf of each Option Scheme Participant) that in consideration for the Option Scheme Participants agreeing to cancel their respective Scheme Options under the terms of the Option Scheme, US Holdco will on the Implementation Date issue one US Holdco Option to each Option Scheme Participant that is not an Ineligible Foreign Optionholder for every 100 Scheme Options held by that Option Scheme Participant on the Record Date (**Option Scheme Consideration**) in accordance with the terms of the Option Scheme and Option Scheme Deed Poll.
- (b) Where the calculation of the number of US Holdco Options to be issued to a particular Option Scheme Participant would result in the issue of a fraction of a US Holdco Option, then any such fractional entitlement will be rounded up to the nearest whole number of US Holdco Options.
- (c) Incannex acknowledges that the undertaking by US Holdco in clause 5.3(a) is given to Incannex in its own right and in its capacity as trustee and nominee for each Option Scheme Participant.

5.4 Terms of US Holdco Options

Each US Holdco Option issued as Option Scheme Consideration in accordance with the Option Scheme and the Option Scheme Deed Poll will:

- (a) have an exercise price per US Holdco Share equal to 100 times the exercise price per Incannex Share of the relevant Scheme Option it replaces, converted from Australian dollars to US dollars at the prevailing currency exchange rate on the Implementation Date, as reasonably determined by Incannex;
- (b) have an exercise period equal to the unexpired exercise period of the relevant Scheme Option it replaces;
- (c) have the same terms as to vesting as the relevant Scheme Option it replaces; and
- (d) otherwise be on the same terms as the Scheme Option it replaces, with necessary changes due to US Holdco being the issuer in place of Incannex.

5.5 Ineligible Foreign Optionholders

US Holdco will be under no obligation under this deed to allot or issue, and will not issue any Option Scheme Consideration (in the form of US Holdco Options) in the name of any Ineligible Foreign Optionholder and, instead, any Scheme Options held by Ineligible Foreign Optionholders on the Record Date will be cancelled for nil consideration.

5.6 Option Scheme Deed Poll

US Holdco covenants in favour of Incannex (in its own right and separately as trustee for each of the Option Scheme Participants) to execute and deliver to Incannex before 5:00pm on the Business Day prior to the First Court Date the Option Scheme Deed Poll.

6 Implementation of the Schemes

6.1 General obligations

Incannex and US Holdco must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers act reasonably and work in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to procure the preparation of the Scheme Booklet and implement the Schemes as soon as reasonably practicable.

6.2 Incannex obligations

Incannex must, acting at all times in good faith, take all steps reasonably necessary to implement the Schemes as soon as reasonably practicable and on and subject to the terms of this deed. Without limiting the foregoing, Incannex must (to the fullest extent applicable):

- (a) **(announce directors' recommendation)** following execution of this deed, announce, in the form of its Agreed Public Announcement (on the basis of statements made to Incannex by each Incannex Director that):
- (i) in respect of the Share Scheme:
- (A) the Incannex Directors intend to recommend the Share Scheme to Incannex Shareholders and recommend that Incannex Shareholders vote in favour of the Share Scheme at the Share Scheme Meeting; and
- (B) each Incannex Director intends to vote, or cause to be voted, all Incannex Shares in which they have a Relevant Interest in favour of the Share Scheme at the Share Scheme Meeting,
- in each case in the absence of:
- (C) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Share Scheme is not in the best interests of Incannex Shareholders; or
- (D) in the case of the recommendation in clause 6.2(a)(i)(A), an Incannex Director making a determination in accordance with clause 6.4; and
- (ii) in respect of the Option Scheme:
- (A) the Incannex Directors intend to recommend the Option Scheme to Incannex Optionholders and recommend that Incannex Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting; and
- (B) each Incannex Director intends to vote, or cause to be voted, all Incannex Options in which they have a Relevant Interest in favour of the Option Scheme at the Option Scheme Meeting,
- in each case in the absence of:
- (C) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of Incannex Optionholders; or
- (D) in the case of the recommendation in clause 6.2(a)(ii)(A), an Incannex Director making a determination in accordance with clause 6.4;
- (b) **(Independent Expert)** as soon as reasonably practicable after the Execution Date, appoint the Independent Expert, in accordance with RG 112, and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (and any update to any such report);
- (c) **(preparation of Scheme Booklet)**:
- (i) prepare the Scheme Booklet (other than US Holdco Information and the Independent Expert's Report) in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60, the Listing Rules, applicable United States securities laws and regulations, the applicable rules of NASDAQ and, subject to clause 6.3(a), include US Holdco Information in the Scheme Booklet; and

(ii) consult with US Holdco as to the content and presentation of the Scheme Booklet, including providing US Holdco with drafts of the Scheme Booklet and the factual information sections relating to US Holdco in the Independent Expert's Report, in a timely manner and, acting reasonably and in good faith, consider (and, where applicable, promptly provide to the Independent Expert in writing) all reasonable comments from US Holdco and its Representatives on those drafts when preparing revised drafts, provided that such comments are provided to Incannex in a timely manner (however, in relation to the Independent Expert's Report, Incannex is only responsible to ensure that the Independent Expert considers comments relating exclusively to factual accuracy);

(d) **(Incannex Directors recommendation and voting intentions in Scheme Booklet)** state in the Scheme Booklet that:

(i) in respect of the Share Scheme:

- (A) the Incannex Directors recommend the Share Scheme to Incannex Shareholders and recommend that Incannex Shareholders vote in favour of the Share Scheme at the Share Scheme Meeting; and
- (B) each Incannex Director intends to vote, or cause to be voted, all Incannex Shares in which they have a Relevant Interest in favour of the Share Scheme at the Share Scheme Meeting,

in each case in the absence of:

- (C) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Share Scheme is not in the best interests of Incannex Shareholders; or
- (D) in the case of the recommendation in clause 6.2(d)(i)(A), an Incannex Director making a determination in accordance with clause 6.4; and

(ii) in respect of the Option Scheme:

- (A) the Incannex Directors recommend the Option Scheme to Incannex Optionholders and recommend that Incannex Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting; and
- (B) each Incannex Director intends to vote, or cause to be voted, all Incannex Options in which they have a Relevant Interest in favour of the Option Scheme at the Option Scheme Meeting,

in each case in the absence of:

- (C) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of Incannex Optionholders; or
- (D) in the case of the recommendation in clause 6.2(d)(ii)(A), an Incannex Director making a determination in accordance with clause 6.4;

(e) **(lodgement of Regulator's Drafts)**

- (i) no later than 14 days before the First Court Date, provide a near final draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to US Holdco immediately thereafter; and
- (ii) keep US Holdco reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with US Holdco in good faith prior to taking any steps or actions to address any such material issues (provided that, where such issues relate to US Holdco Information, Incannex must not take any steps to address them without US Holdco's prior written consent, not to be unreasonably withheld or delayed);

- (f) **(no objection statement)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to each of the Schemes;
- (g) **(First Court Hearing)** apply to the Court for orders under section 411(1) of the Corporations Act directing Incannex to convene the Share Scheme Meeting and the Option Scheme Meeting;
- (h) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Incannex Information, and, once such processes have been completed, provide written confirmation to US Holdco of the completion of such processes;
- (i) **(approval and registration of Scheme Booklet)** if the Court directs Incannex to convene the Share Scheme Meeting and the Option Scheme Meeting, request that, in accordance with section 412(6) of the Corporations Act, ASIC register the Scheme Booklet;
- (j) **(Share Scheme Meeting and Option Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Incannex Shareholders and Incannex Optionholders, and convene and hold the Share Scheme Meeting and the Option Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;
- (k) **(Director votes and participation)** use its reasonable endeavours to procure that each Incannex Director votes any Incannex Shares and Incannex Options in which they have a Relevant Interest in favour of the Share Scheme at the Share Scheme Meeting and the Option Scheme at the Option Scheme Meeting and participates in reasonable efforts to promote the Share Scheme (in the absence of the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Share Scheme is not in the best interests of Incannex Shareholders) and the Option Scheme (in the absence of the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of Incannex Optionholders);
- (l) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Incannex becomes aware:
- (i) that information included in the Scheme Booklet is or has become false, misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Incannex Shareholders or Incannex Optionholders under any applicable law or having regard to RG 60 but was not included in the Scheme Booklet,
- promptly disclose such information to and consult with US Holdco in good faith as to the need for, and form of, any supplementary disclosure to Incannex Shareholders and Incannex Optionholders, the need for, the timing of, and directions to be sought at, an additional application to the Court, and make any disclosure that it is ordered to make or considers reasonably necessary in the circumstances, having regard to orders made by the Court, applicable laws and RG 60;
- (m) **(Conditions Precedent certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in respect of the Share Scheme (other than the Conditions Precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to US Holdco by 5:00pm on the Business Day prior to the Second Court Date;

- (ii) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in respect of the Option Scheme (other than the Conditions Precedent in clauses 3.2(c), 3.2(e) and 3.2(f)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to US Holdco by 5:00pm on the Business Day prior to the Second Court Date; and
 - (iii) any certificate provided to it by US Holdco pursuant to clause 6.3(i);
- (n) **(Second Court Hearing)** subject to:
- (i) the Conditions Precedent (other than the Conditions Precedent in clauses 3.1(c) and 3.1(d)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Share Scheme; and
 - (ii) the Conditions Precedent (other than the Conditions Precedent in clauses 3.2(c), 3.2(e) and 3.2(f)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Option Scheme;
- (o) **(Court Documents)** prepare the Court Documents, provide drafts of those documents to US Holdco in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from US Holdco and its Representatives on those drafts, provided that such comments are provided in a timely manner;
- (p) **(extract Court order and notify ASX)** as soon as reasonably possible after conclusion of the Second Court Hearing:
- (i) obtain an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Share Scheme; and
 - (ii) obtain an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Option Scheme,
- and, promptly after receipt of the orders, tell ASX of the Incannex's intention to lodge the Court orders with ASIC the following day;
- (q) **(lodgement of Court order)** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Share Scheme and the Option Scheme before 5:00pm on the Business Day following the day on which it receives such office copy;
- (r) **(suspension of trading and de-listing)** apply to:
- (i) ASX to have:
 - (A) trading in Incannex Shares suspended from the close of trading on the Effective Date; and
 - (B) Incannex removed from the official list of ASX, and quotation of Incannex Shares on ASX terminated, with effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date,

or, in each case, such other dates as the parties may agree, acting reasonably, following consultation with ASX and not do anything to cause any of these things to happen before the time specified in this clause 6.2(r); and
 - (ii) NASDAQ to have trading suspended in Incannex ADSs (by way of submission of a "corporate action" form to NASDAQ in order to transfer the listing of the Incannex ADSs to a listing of US Holdco Shares) from the close of trading on NASDAQ on the Implementation Date;

- (s) **(Share Scheme implementation)**: if the Court makes orders under section 411(4) of the Corporations Act approving the Share Scheme:
 - (i) determine the identity of each Share Scheme Participant and their entitlement to the Share Scheme Consideration as at the Record Date, including by taking up-to-date copies of the Incannex Share Register current as at the Record Date;
 - (ii) provide to US Holdco all information about the Share Scheme Participants that US Holdco reasonably requires in order for US Holdco to provide the Share Scheme Consideration to the Share Scheme Participants in accordance with the Share Scheme;
 - (iii) execute proper instruments of transfer of and giving effect to and registering the transfer of the Incannex Shares to US Holdco in accordance with the Share Scheme;
 - (iv) do all other things contemplated by or necessary to give effect to the Share Scheme and the orders of the Court;
- (t) **(Option Scheme Implementation)** if the Court makes orders under section 411(4) of the Corporations Act approving the Option Scheme:
 - (i) determine the identity of each Option Scheme Participant and their entitlement to the Option Scheme Consideration as at the Record Date, including by taking up-to-date copies of the Incannex Option Register current as at the Record Date;
 - (ii) provide to US Holdco all information about the Option Scheme Participants that US Holdco reasonably requires in order for US Holdco to provide the Option Scheme Consideration to the Option Scheme Participants in accordance with the Option Scheme; and
 - (iii) subject to US Holdco satisfying its obligations to provide the Option Scheme Consideration to the Option Scheme Participants in accordance with the Option Scheme, cancel the Scheme Options on the Implementation Date;
- (u) **(Share Scheme Consideration)** subject to the Share Scheme being Effective, facilitate the provision of the Share Scheme Consideration to Share Scheme Participants;
- (v) **(Option Scheme Consideration)** subject to the Option Scheme being Effective, facilitate the provision of the Option Scheme Consideration to Option Scheme Participants; and
- (w) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy.

6.3 US Holdco obligations

US Holdco must, acting at all times in good faith, take all steps reasonably necessary to implement the Schemes as soon as reasonably practicable and on and subject to the terms of this deed. Without limiting the foregoing, US Holdco must (to the fullest extent applicable):

- (a) **(prepare US Holdco Information)**
 - (i) as soon as reasonably practicable after the Execution Date, prepare the US Holdco Information for inclusion in the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and Corporations Regulations), RG 60 and the Listing Rules; and
 - (ii) provide Incannex with drafts of the US Holdco Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Incannex and its Representatives on those drafts, provided that such comments are provided to US Holdco in a timely manner;

- (b) **(assistance with Scheme Booklet and Court Documents)** provide any assistance or information reasonably requested by Incannex or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Incannex Shareholders or Incannex Optionholders) or any Court Documents, including reviewing the drafts of the Scheme Booklet prepared by Incannex and provide comments in a timely manner on those drafts in good faith;
- (c) **(Independent Expert's Report)** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, provide any assistance or information reasonably requested by Incannex or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report (and any update or variation to any such report);
- (d) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the US Holdco Information, and, once those processes have been completed, provide written confirmation to Incannex of the completion of such processes;
- (e) **(confirmation of US Holdco Information)** promptly after Incannex requests that it does so, confirm in writing to Incannex that:
- (i) it consents to the inclusion of the US Holdco Information in the Scheme Booklet, in the form and context in which the US Holdco Information appears; and
 - (ii) the US Holdco Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such US Holdco Information, in that form and context, has been approved by the US Holdco Board;
- (f) **(Share Scheme Deed Poll and Option Scheme Deed Poll)** before 5:00pm on the Business Day prior to the First Court Date, enter into the Share Scheme Deed Poll and the Option Scheme Deed Poll and deliver them to Incannex, and:
- (i) if the Share Scheme becomes Effective, fully comply with its obligations under the Share Scheme Deed Poll; and
 - (ii) if the Option Scheme becomes Effective, fully comply with its obligations under the Option Scheme Deed Poll;
- (g) **(United States legal opinion)**: deliver to Incannex an opinion from its United States legal counsel, in a form satisfactory to Incannex (acting reasonably), that each of the Share Scheme Deed Poll and the Option Scheme Deed Poll are legally binding on and enforceable against US Holdco under the laws of Delaware;
- (h) **(update US Holdco Information)** promptly advise Incannex in writing if it becomes aware:
- (i) of information which should have been but was not included in the US Holdco Information in the Scheme Booklet (including if known at the time), and promptly provide Incannex with the omitted information; or
 - (ii) that the US Holdco Information in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide Incannex with any information required to correct the misleading or deceptive statements;
- (i) **(Conditions Precedent certificate)** before 8:00am on the Second Court Date, provide to Incannex for provision to the Court at the Second Court Hearing:
- (i) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in respect of the Share Scheme (other than the Conditions Precedent in clauses 3.1(c) and 3.1(d)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Incannex by 5:00pm on the Business Day prior to the Second Court Date;

- (ii) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in respect of the Option Scheme (other than the Conditions Precedent in clauses 3.2(c), 3.2(e) and 3.2(f)) have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Incannex by 5:00pm on the Business Day prior to the Second Court Date;
- (j) **(Share Scheme Consideration)** if the Share Scheme becomes Effective, do all things necessary to issue the Share Scheme Consideration in accordance with the terms of this deed, the Share Scheme and the Share Scheme Deed Poll;
- (k) **(Option Scheme Consideration)** if the Option Scheme becomes Effective, do all things necessary to issue the Option Scheme Consideration in accordance with the terms of this deed, the Option Scheme and the Option Scheme Deed Poll;
- (l) **(Scheme Shares transfer)** if the Share Scheme becomes Effective, accept a transfer of the Scheme Shares and execute instruments of transfer in respect of the Scheme Shares, in each case, in accordance with this deed, the Share Scheme and the Share Scheme Deed Poll;
- (m) **(US Holdco Shares)** apply to NASDAQ to list US Holdco Shares via a successor listing (subject to the Share Scheme becoming Effective), and use reasonable endeavours to obtain the satisfaction of any conditions imposed by NASDAQ for such listing; and
- (n) **(compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy.

6.4 Form of Recommendation

Clauses 6.2(a) and 6.2(d) are qualified to the extent that, after first obtaining written advice from external legal counsel, an Incannex Director reasonably determines that they should not provide or continue to maintain any recommendation because that Incannex Director has an interest in the Share Scheme or the Option Scheme that renders it inappropriate for them to maintain any such recommendation in relation to that Scheme.

6.5 Scheme Booklet

- (a) If the parties are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
 - (i) if the relevant part of the Scheme Booklet is US Holdco Information, Incannex will make such amendments to that part of the Scheme Booklet as required by US Holdco (acting reasonably and in good faith); and
 - (ii) in any other case, Incannex (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) The parties agree that the Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) Incannex is responsible for the Incannex Information contained in the Scheme Booklet;
 - (ii) US Holdco is responsible for the US Holdco Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Incannex, US Holdco or their respective Representatives assumes any responsibility for the accuracy or completeness of the Independent Expert's Report or any other report or letter issued to Incannex by a third party in connection with the Independent Expert's Report.
- (c) Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

7 Termination rights

7.1 Termination events

Without limiting any other provision of this deed:

- (a) either party may terminate this deed by notice in writing to the other party:
 - (i) if the End Date has passed before the Transaction has been implemented (other than as a result of a breach by the terminating party of its obligations under this deed);
 - (ii) if each of the following has occurred:
 - (A) the other party (being a defaulting party) is in breach of a material provision of this deed at any time prior to 8:00am on the Second Court Date;
 - (B) the terminating party (being a non-defaulting party) has given notice to the defaulting party setting out the relevant circumstances of the breach and stating an intention to terminate this deed; and
 - (C) the relevant circumstances have continued to exist 10 Business Days (or any shorter period ending at 8:00am on the Second Court Date) from the time the notice in clause 7.1(a)(ii)(B) is given;
 - (iii) if the required majorities of Incannex Shareholders do not approve the Share Scheme at the Share Scheme Meeting; or
 - (iv) if any of the Conditions Precedent in clause 3.1 or 3.2 is incapable of being satisfied or fulfilled (other than as a result of a breach by the terminating party of its obligations under this deed); or
 - (v) if a Court or other Regulatory Authority has issued an order, decree or ruling or taken other action that permanently restrains or prohibits the Transaction and that order, decree, ruling or other action has become final and cannot be appealed; and
- (b) either party may terminate this agreement if the other party consents to do so and both parties confirm it in writing.

7.2 Notice of breach

Each party must give notice to the other party as soon as practicable after it becomes aware of a breach by it of this deed.

7.3 Termination right

- (a) Any right to terminate this deed under clauses 7.1(a) or 7.1(b) that arises before the Second Court Date ceases at 8:00am on the Second Court Date.
- (b) Subject to clause 7.3(a), any right to terminate this deed ceases when the Share Scheme becomes Effective.

7.4 Effect of termination

- (a) If a party terminates this deed, each party will be released from all further obligations under this deed other than under clauses 1, 8, 9, 10, 11 (other than 11.8) and 12.
- (b) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of this clause 7.4), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.

7.5 Disclosure on termination of deed

The parties agree that, if this deed is terminated under this clause 7, any party may disclose:

- (a) the fact that this deed has been terminated, where such disclosure is required by the Listing Rules or the rules of NASDAQ, or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed;
- (b) the fact that this deed has been terminated to ASIC and the Court; and
- (c) information that is required to be disclosed as a matter of law or in any proceedings.

8 Public announcements

8.1 Announcement of transaction

Immediately after execution of this deed, Incannex must release the Agreed Public Announcement.

8.2 Public announcements

- (a) Subject to clause 8.2(b), no public announcement or disclosure in relation to the Transaction or any subject matter thereof, or any other transaction the subject of this deed, the Share Scheme or the Option Scheme (including any staff or client announcements or presentations) may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.
- (b) Where US Holdco, Incannex or any of their Affiliates is required by law and/or ASX (e.g., pursuant to the Listing Rules), ASIC, SEC or NASDAQ, to make any announcement or make any filing or disclosure in relation to the Transaction or any other transaction the subject of this deed, the Share Scheme or the Option Scheme, it may do so only after it has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with the other party prior to making the relevant disclosure.
- (c) US Holdco and Incannex agree to consult with each other in advance in relation to:
 - (i) overall communication plans;
 - (ii) approaches to Incannex Shareholders;
 - (iii) approaches to the media;
 - (iv) proxy solicitations; and
 - (v) written presentations,

including to provide each other a reasonable advance opportunity to comment, to ensure that the information used in clauses 8.2(c)(i) to 8.2(c)(v) above is consistent with the information in the Scheme Booklet.

8.3 Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 8.2(a) to 8.2(c) applies to any such statements or disclosures.

9 Notices

9.1 Manner of giving notice

Any notice or other communication to be given under this deed must be in writing (which includes email) and may be delivered or sent by post or email to the party to be served in accordance with the details set out in the 'Details' section of this deed on page 1 or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

9.2 When notice given

- (a) Any notice or other communication is deemed to have been given:
- (i) if delivered, on the date of delivery; or
 - (ii) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
 - (iii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday.

9.3 Proof of service

In proving service of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the email was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's email system, as the case may be.

9.4 Documents relating to legal proceedings

This clause 9 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this deed.

10 Entire agreement

10.1 Entire agreement

This deed contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction.

10.2 No reliance

Each party acknowledges that in agreeing to enter into this deed it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those expressly set out in this deed) made by or on behalf of any other party before the entering into of this deed. Each party waives all rights and remedies which, but for this clause 10.2 might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

10.3 Termination rights

Except for the express rights of termination contained in clauses 3.7 and 7:

- (a) no party has any right to terminate this deed; and
- (b) the parties waive their rights (if any) to annul, rescind, dissolve, withdraw from, cancel or terminate this deed in any circumstances.

11 General

11.1 Amendments

This deed may only be amended in writing and where such amendment is signed by all the parties.

11.2 Assignments

None of the rights or obligations of a party under this deed may be assigned or transferred without the prior written consent of the other party.

11.3 Costs

Incannex must pay the costs and expenses of the Schemes, except that US Holdco must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed, the Share Scheme or the Option Scheme or the steps to be taken under this deed, the Share Scheme or the Option Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Share Scheme and the cancellation of Scheme Options under the Option Scheme).

11.4 GST

- (a) Where under the terms of this deed one party is liable to indemnify or reimburse another party in respect of any costs, charges or expenses, the payment shall include an amount equal to any GST thereon not otherwise recoverable by the other party, subject to that party using all reasonable endeavours to receive such amount of GST as may be practicable.
- (b) If any payment under this deed constitutes the consideration for a taxable supply for GST purposes, then in addition to that payment the payer shall pay any GST due.
- (c) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this deed are exclusive of GST.

11.5 Consents

Except as otherwise expressly provided in this deed a party may give or withhold its consent to any matter referred to in this deed in its absolute discretion. A party that gives its consent to any matter referred to in this deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

11.6 Counterparts

This deed may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this deed by executing a counterpart.

11.7 Exercise and waiver of rights

The rights of each party under this deed:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this deed, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

11.8 Further assurance

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this deed.

11.9 No merger

Each of the obligations, warranties and undertakings set out in this deed (excluding any obligation which is fully performed at the Implementation Date) must continue in force after the Implementation Date.

11.10 Severability

The provisions contained in each clause and sub clause of this deed shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid.

12 Governing law and jurisdiction

12.1 Governing law

This deed and any non-contractual obligations arising out of or in connection with it is governed by the law applying in Victoria, Australia.

12.2 Jurisdiction

The courts having jurisdiction in Victoria have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to any non-contractual obligations arising out of or in connection with this deed) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Victoria.

EXECUTION

Executed as a deed

Executed as a deed by **Incannex Healthcare Limited** ACN 096 635 246 in accordance with section 127 of the *Corporations Act 2001* (Cth):

/s/ Joel Latham
Director

JOEL LATHAM
Name of Director
BLOCK LETTERS

Executed by an authorised signatory of Incannex Healthcare Inc.:

/s/ Joel Latham
Signature of authorised person

JOEL LATHAM
Name of authorised person
BLOCK LETTERS

/s/ Madhukar Bhalla
*Director/*Company Secretary

Madhukar Bhalla
Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Schedule 1– Share Scheme of Arrangement

**SCHEME OF ARRANGEMENT MADE
UNDER SECTION 411 OF THE
CORPORATIONS ACT 2001 (CTH)**

Incannex Healthcare Limited – Shares

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

DETAILS

Parties **Incannex Healthcare Limited** ACN 096 635 246 of Level 23, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 (**Incannex**)
AND

The registered holders of the fully paid ordinary shares in the capital of Incannex as at 7:00pm on the Record Date other than an Excluded Shareholder (**Share Scheme Participants**)

1 Defined terms & interpretation

1.1 Defined terms

In this Share Scheme, except where the context otherwise requires:

ADS means an American Depositary Share.

ADS Depository means Deutsche Bank Trust Company Americas.

ADS Holder means a holder of Incannex ADSs.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires.

ASX Settlement means ASX Settlement Pty Ltd ABN 49 008 504 532.

ASX Settlement Rules means the ASX Settlement Operating Rules of ASX Settlement.

Business Day means a business day as defined in the Listing Rules and, to the extent any action must be taken in relation to NASDAQ, a day on which NASDAQ is operating but excludes a day that is a Saturday, Sunday, bank holiday or public holiday in Melbourne, Victoria or New York, United States of America.

CHESS means the clearing house electronic sub-register system of security transfers operated by ASX Settlement.

Conditions Precedent means the conditions precedent to this Share Scheme set out in clause 3.1 of the Scheme Implementation Deed.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court of competent jurisdiction under the Corporations Act.

Effective means, when used in relation to the Share Scheme, the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Share Scheme taking effect pursuant to section 411(10) of the Corporations Act, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Share Scheme becomes Effective.

Election Form means the form accompanying the Scheme Booklet, pursuant to which Small Parcel Holders may elect to not participate in the Sale Facility.

Eligible Jurisdictions means Australia, Canada, Germany, Hong Kong, Indonesia, Italy, Japan, Netherlands, New Zealand, Philippines, Singapore, United Kingdom and the United States and such other jurisdictions as agreed in writing between Incannex and Incannex US from time to time.

Encumbrance means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement and any other security arrangement of any kind given or created and including any possessory lien in the ordinary course of business whether arising by law or contract.

End Date means 29 February 2024, or such later date as agreed to in writing between Incannex and US Holdco from time to time.

Excluded Shareholder means any member of the US Holdco Group.

Excluded Shares means any Incannex Shares held by an Excluded Shareholder.

Excluded Small Parcel Holder means a Small Parcel Holder who has made a valid election referred to in clause 6.7 to not participate in the Sale Facility and will not be treated as a Small Parcel Holder.

Ineligible Foreign Shareholder means any Share Scheme Participant whose address shown on the Incannex Share Register is a place outside the Eligible Jurisdictions, unless, no less than three Business Days prior to the Share Scheme Meeting, Incannex and US HoldCo agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Incannex Shareholder with the US HoldCo Shares when the Share Scheme becomes Effective.

Implementation Date means the fifth Business Day after the Record Date, or such other date agreed to in writing by Incannex and US Holdco.

Incannex ADS means an ADS, representing 25 Incannex Shares and which trade on NASDAQ under the ticker code "IXHL".

Incannex Share means a fully paid ordinary share issued in the capital of Incannex.

Incannex Share Register means the register of Incannex shareholders maintained by or on behalf of Incannex in accordance with the Corporations Act.

Incannex Shareholder means a person who is registered in the Incannex Share Register as the holder of one or more Incannex Shares, from time to time.

Independent Expert means a person to be appointed by Incannex to prepare the Independent Expert's Report.

Independent Expert's Report means the independent expert's report prepared by the Independent Expert for inclusion in the Scheme Booklet, which states the Independent Expert's opinion in relation to whether:

- (a) the Share Scheme is in the best interest of Incannex Shareholders; and
- (b) the Option Scheme is in the best interest of Incannex Optionholders, including any updates or amendments to this report made by the Independent Expert.

Listing Rules means the official listing rules of the ASX.

Marketable Parcel has the meaning given to that term in the Listing Rules, with the closing price on the last day of Incannex Shares trading on ASX used to determine this.

NASDAQ means the NASDAQ Stock Market LLC.

Option Scheme has the meaning given to it in the Scheme Implementation Deed.

Record Date means 7:00pm on the second Business Day following the Effective Date, or such other date (after the Effective Date) as Incannex and US Holdco may agree in writing.

Representative means:

- (a) in relation to Incannex, any director, officer or employee of any member of Incannex and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Incannex in relation to the Schemes; and
- (b) in relation to US Holdco, any director, officer or employee of any member of US Holdco and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to US Holdco in relation to the Schemes.

Sale Agent means a person appointed by US Holdco to administer the Sale Facility and to sell or arrange the sale of US Holdco Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Shareholders or Small Parcel Holders (excluding Excluded Small Parcel Holders) under the terms of the Share Scheme.

Sale Facility means the facility to be administered by the Sale Agent pursuant to which Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) will have their Share Scheme Consideration sold on their behalf and have the net proceeds of sale remitted to them under the terms of the Share Scheme.

Scheme Booklet means the information booklet to be despatched to all Incannex Shareholders and Incannex Optionholders and approved by the Court in connection with the Schemes, including this Share Scheme, the Option Scheme, the explanatory statement in respect of the Schemes, the Independent Expert's Report and the notice of meeting.

Scheme Implementation Deed means the scheme implementation deed dated on or about 10 July 2023 between Incannex and US Holdco, as amended or varied from time to time.

Scheme Shares means all of the Incannex Shares on issue on the Record Date other than Excluded Shares.

Schemes means this Share Scheme and the Option Scheme.

Second Court Date means the first day on which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Share Scheme and Option Scheme is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

Share Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Incannex and Incannex Shareholders, as set out in this document, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by US Holdco and Incannex.

Share Scheme Consideration means such number of US Holdco Shares for each Scheme Share held by Share Scheme Participants at 7:00pm on the Record Date as described in clause 6.3.

Share Scheme Deed Poll means the deed poll executed by US Holdco, substantially in the form of Schedule 2 to the Scheme Implementation Deed.

Share Scheme Meeting means the meeting of Incannex Shareholders convened by the Court in relation to the Share Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

Share Scheme Order means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.9, section 411(6) of the Corporations Act) in relation to this Share Scheme.

Share Scheme Participant means each person who is an Incannex Shareholder on the Record Date (other than Excluded Shareholders).

Share Scheme Transfer means, for each Share Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Share Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer for all Scheme Shares.

Small Parcel Holder means a Share Scheme Participant who is not an Ineligible Foreign Shareholder and who holds less than a Marketable Parcel of Incannex Shares on the Record Date.

Subsidiaries has the meaning given to that term in section 9 of the Corporations Act.

Trading Day means a trading day as defined in the Listing Rules.

US Holdco means Incannex Healthcare Inc., a corporation incorporated in the State of Delaware, United States of America and whose principal business address is 18 East 50th Street, 5th Floor, New York, NY 10022.

US Holdco Share means a share of common stock of US Holdco.

US Holdco Share Register means the register of US Holdco shareholders maintained by or on behalf US Holdco and maintained in accordance with the Delaware General Corporation Law.

1.2 Interpretation

In this Share Scheme:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this document includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (f) a reference to US\$ or USD is to the lawful currency of the United States;
- (g) a reference to time is to time in Melbourne, Victoria time, unless otherwise noted;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and

- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 Preliminary

2.1 Incannex

- (a) Incannex is a public company limited by shares incorporated in Australia and registered in Western Australia.
- (b) Incannex is admitted to the official list of ASX and its shares, being the Incannex Shares, are officially quoted on the securities market conducted by ASX. Incannex is also admitted to NASDAQ and Incannex ADSs are quoted on NASDAQ.
- (c) Incannex's registered office is at Level 23, Rialto South Tower, 525 Collins Street, Melbourne 3000 Victoria Australia.

2.2 US Holdco

US Holdco is a company incorporated under the laws of Delaware in the United States of America. US Holdco's principal business office is at 18 East 50th Street, 5th Floor, New York, NY 10022.

2.3 Agreement to implement this Share Scheme

Incannex and US Holdco have agreed, by executing the Scheme Implementation Deed, to implement the terms of this Share Scheme and the steps contemplated to follow the implementation of this Share Scheme, to the extent those steps are required to be done by each of them.

2.4 Share Scheme Deed Poll

- (a) This Share Scheme attributes actions to US Holdco but does not itself impose an obligation on US Holdco to perform those actions. US Holdco has undertaken in favour of each Share Scheme Participant, by executing the Share Scheme Deed Poll, that it will fulfil its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to this Share Scheme, including to issue to each Share Scheme Participant the Share Scheme Consideration for each Scheme Share held by the Share Scheme Participant.
- (b) Incannex undertakes in favour of each Share Scheme Participant to enforce the Share Scheme Deed Poll against US Holdco on behalf of and as agent and attorney for the Share Scheme Participants.

2.5 Summary of Share Scheme

If this Share Scheme becomes Effective:

- (a) all of the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) will be transferred to US Holdco and Incannex will become a subsidiary of US Holdco on the Implementation Date;
- (b) in consideration of the transfer to US Holdco of each Scheme Share held by a Share Scheme Participant, US Holdco will, on the Implementation Date, provide to each Share Scheme Participant the Share Scheme Consideration in accordance with the terms of the Scheme Implementation Deed, this Share Scheme and the Share Scheme Deed Poll;
- (c) Incannex will enter the name of US Holdco in the Incannex Share Register as the holder of all the Scheme Shares;

- (d) it will bind Incannex and all Share Scheme Participants, including those who do not attend the Share Scheme Meeting, those who do not vote at the Share Scheme Meeting and those who vote against this Share Scheme at the Share Scheme Meeting; and
- (e) it will override the constitution of Incannex, to the extent of any inconsistency.

3 Conditions Precedent

3.1 Conditions Precedent

This Share Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions:

- (a) all of the Conditions Precedent being satisfied or waived (other than the conditions in clauses 3.1(c) (**Court Approval of Share Scheme**) and 3.1(d) (**Share Scheme Orders Lodged with ASIC**) of the Scheme Implementation Deed) in accordance with the Scheme Implementation Deed by the times set out in the Scheme Implementation Deed;
- (b) as at 8:00 am on the Second Court Date, the Scheme Implementation Deed not having been terminated in accordance with its terms;
- (c) as at 8:00 am on the Second Court Date, the Share Scheme Deed Poll not having been terminated in accordance with its terms;
- (d) approval of the Share Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act and if applicable, Incannex and US Holdco having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Share Scheme and agreed to by Incannex and US Holdco as having been satisfied or waived;
- (f) lodgement with ASIC of an office copy of the order of the Court approving the Share Scheme pursuant to section 411(10) of the Corporations Act; and
- (g) the Share Scheme Order comes into effect, pursuant to section 411(10) of the Corporations Act.

3.2 Effect of Conditions Precedent

The satisfaction of each condition in clauses 3.1(a) to 3.1(g) (inclusive) of this Share Scheme (**Condition**) is a condition precedent to the operation of this Share Scheme.

3.3 Certificate

- (a) Incannex and US Holdco will provide to the Court on the Second Court Date a certificate signed by US Holdco and Incannex (or such other evidence as the Court requests):
 - (i) stating whether or not the Conditions Precedent have been satisfied or waived (other than the Conditions Precedent in clauses 3.1(c) and 3.1(d) of the Scheme Implementation Deed) as at 8:00am on the Second Court Date; and
 - (ii) confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(b) and 3.1(c) of this Share Scheme have been satisfied or waived as at 8:00am on the Second Court Date.
- (b) The certificate referred to in clause 3.3(a) will constitute conclusive evidence of whether such Conditions Precedent have been satisfied or waived as at 8:00am on the Second Court Date.

4 The Share Scheme

4.1 Effective Date

Subject to clause 4.2, this Share Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 End Date

Without limiting any rights under the Scheme Implementation Deed, this Share Scheme will lapse and be of no further force or effect (and US Holdco is released from any obligations and any liability in connection with this Share Scheme and the Share Scheme Deed Poll) if:

- (a) the Effective Date has not occurred on or before the End Date; or
 - (b) the Scheme Implementation Deed or Deed Poll is terminated in accordance with its terms,
- unless Incannex or US Holdco otherwise agree in writing (and, if required, as approved by the Court).

5 Implementation of the Share Scheme

5.1 Lodgement of Share Scheme Order with ASIC

Incannex will lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Share Scheme Order as soon as practicable, and in any event by no later than 5:00pm on the first Business Day after the date on which the Court makes that Share Scheme Order (or on such other Business Day as Incannex and US Holdco agree).

5.2 Transfer of Scheme Shares

Subject to the Share Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Share Scheme Consideration in accordance with clause 6, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, must be transferred to US Holdco, without the need for any further act by any Share Scheme Participant (other than acts performed by Incannex as agent and attorney of the Share Scheme Participants under clauses 8.1 and 8.2 or otherwise), by:
 - (i) Incannex delivering to US Holdco a duly completed Share Scheme Transfer, executed on behalf of the Share Scheme Participants by Incannex; and
 - (ii) US Holdco executing that Share Scheme Transfer, attending to the stamping of the Share Scheme Transfer (if required) and delivering it to Incannex for registration; and
- (b) immediately after receipt of the Share Scheme Transfer in accordance with clause 5.2(a)(ii), but subject to the stamping of the Share Scheme Transfer (if required), Incannex must enter, or procure the entry of, the name of US Holdco in the Incannex Share Register in respect of the Scheme Shares transferred to US Holdco in accordance with the Share Scheme.

5.3 Timing

Notwithstanding any other provision of this Share Scheme, while US Holdco Shares forming the Share Scheme Consideration must be issued (and the US Holdco Share Register updated to record their issuance) on the Implementation Date, any requirements under clause 6 for the sending of holding statements or allotment advices (or equivalent) may be satisfied as soon as practicable after the Implementation Date.

5.4 Entitlement to Share Scheme Consideration

Subject to this Share Scheme becoming Effective, in consideration of the transfer of the Scheme Shares to US Holdco, and subject to the other terms and conditions of this Share Scheme, on the Implementation Date:

- (a) each Share Scheme Participant (who is not an Ineligible Foreign Shareholder or Small Parcel Holder (excluding Excluded Small Parcel Holders)) will be issued the Share Scheme Consideration in respect of the Scheme Shares held by them on the Record Date in accordance with clause 6 of this Share Scheme; and
- (b) the Sale Agent will be issued the Share Scheme Consideration by US Holdco in respect of the Scheme Shares held by all Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) on the Record Date in accordance with clause 6 of this Share Scheme.

6 Share Scheme Consideration

6.1 Share Scheme Consideration

On the Implementation Date, Incannex must procure US Holdco to issue the Share Scheme Consideration to:

- (a) the Share Scheme Participants (other than Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders)) in accordance with clause 6.3(c) of this Share Scheme; and
- (b) the Sale Agent in respect of all Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) on the Record Date to be dealt with in accordance with clause 6.8(a) of this Share Scheme.

6.2 Rounding entitlements

Where the calculation of the number of US Holdco Shares to be issued to a particular Share Scheme Participant would result in the issue of a fraction of a US Holdco Share, then any such fractional entitlement will be rounded up to the nearest whole number of US Holdco Shares.

6.3 Issue of Share Scheme Consideration

- (a) Not later than one Business Day after the Record Date, Incannex will give to US Holdco a notice specifying the persons to whom US Holdco Shares are to be issued pursuant to clause 5.4 and the number of US Holdco Shares to which they are entitled (including the number to be issued to the Sale Agent).
- (b) On the Implementation Date, Incannex must procure the issue, to each Share Scheme Participant the Share Scheme Consideration for each Scheme Share transferred to US Holdco on the Implementation Date by that Share Scheme Participant.
- (c) The obligation of Incannex to procure the issue of the Share Scheme Consideration under this Share Scheme will be satisfied by US Holdco:
 - (i) in the case of a Share Scheme Participant who holds Scheme Shares (other than the Australian custodian for the ADS Depository, an Ineligible Foreign Shareholder or a Small Parcel Holder (excluding an Excluded Small Parcel Holder)), issuing one new US Holdco Share to that Share Scheme Participant for every 100 Scheme Shares held by that Share Scheme Participant on the Record Date;

- (ii) in the case of a Share Scheme Participant who holds Scheme Shares on behalf of the ADS Depository (who itself holds Incannex Shares for the benefit of the ADS Holders), being the Australian custodian for the ADS Depository:
 - (A) issuing one US Holdco Share to the ADS Depository for every 100 Scheme Shares held by the ADS Depository; and
 - (B) procuring the ADS Depository to then, subject to compliance by the ADS Holder within the terms of the arrangements pursuant to which the ADS Depository acts as depository for ADS Holders, deliver (by way of exchange) such US Holdco Shares to the ADS Holders on the basis of one US Holdco Share for every four Incannex ADSs held by the ADS Holder on the Record Date; and
- (iii) issuing to the Sale Agent such number of US Holdco Shares in accordance with clause 6.8 that Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) would otherwise have been entitled to,

and in each case US Holdco entering into the US Holdco Share Register the name of each person who is to receive US Holdco Shares pursuant to this Share Scheme.

6.4 **Joint holders**

In the case of Scheme Shares held in joint names:

- (a) US Holdco Shares to be issued under this Share Scheme will be issued to and registered in the names of the joint holders;
- (b) any other document required to be sent under this Share Scheme will be forwarded to the registered address recorded in the Incannex Share Register; and
- (c) in respect of any Ineligible Foreign Shareholder or Small Parcel Holder (excluding Excluded Small Parcel Holders), any cheque required to be paid to Share Scheme Participants will be payable to the joint holders and will be forwarded to the registered address recorded on the Incannex Share Register on the Record Date.

6.5 **Share Scheme Participants' agreement**

If the Share Scheme becomes Effective:

- (a) each Share Scheme Participant (other than an Ineligible Foreign Shareholder or Small Parcel Holder (excluding an Excluded Small Parcel Holder)) will be deemed:
 - (i) to have agreed to become a member of US Holdco;
 - (ii) to have accepted the US Holdco Shares issued to that holder under this Share Scheme;
 - (iii) to have agreed to have their name and address entered into the US Holdco Share Register; and
 - (iv) to have agreed to be bound by the certificate of incorporation and by-laws of US Holdco in force from time to time in respect of the Holdco Shares;
- (b) each Share Scheme Participant that is an Ineligible Foreign Shareholder or Small Parcel Holder (excluding an Excluded Small Parcel Holder) agrees and acknowledges that the payment to it of an amount in accordance with clause 6.8(c) constitutes the satisfaction in full of its entitlement under this Share Scheme; and
- (c) each Share Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Share Scheme.

6.6 Warranty by Share Scheme Participants

Each Share Scheme Participant warrants to US Holdco and is deemed to have authorised Incannex to warrant to US Holdco as agent and attorney for the Share Scheme Participant by virtue of this clause 6.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to US Holdco under the Share Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to US Holdco under the Share Scheme.

6.7 Small Parcel Holders

Each Small Parcel Holder will be entitled to elect not to participate in the Sale Facility by completing the Election Form and returning it to the address specified on the Election Form so that it is received by the Record Date. An election under this clause 6.7 must be made in accordance with the terms and conditions on the Election Form.

6.8 Ineligible Foreign Shareholders and Small Parcel Holders

- (a) US Holdco has no obligation under this Share Scheme to issue any Share Scheme Consideration in the name of an Ineligible Foreign Shareholder or Small Parcel Holder (excluding an Excluded Small Parcel Holder).
- (b) US Holdco Shares, that would but for clause 6.8(a), have been issued in the name of an Ineligible Foreign Shareholder or a Small Parcel Holder (excluding an Excluded Small Parcel Holder pursuant to clause 6.7) as Share Scheme Consideration, must be issued by US Holdco to the Sale Agent and Incannex must procure that:
 - (i) the name and registered address of the Sale Agent is entered into the US Holdco Share Register on the Implementation Date in respect of the US Holdco Shares required to be issued to it under clause 5.4(b); and
 - (ii) a holding statement is sent to the registered address of the Sale Agent, representing the number of US Holdco Shares issued to it.
- (c) Incannex and US Holdco must procure that the Sale Agent:
 - (i) as soon as reasonably practicable and, in any event, not more than eight weeks after the Implementation Date, sells all US Holdco Shares issued to the Sale Agent pursuant to clause 6.8(b) in such manner at such price and other terms as the Sale Agent determines in good faith for the benefit of the Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders);
 - (ii) promptly after receiving the proceeds in respect of the sale of all of the US Holdco Shares referred to in clause 6.8(c)(i), accounts to the Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) for the net proceeds of sale (on an averaged basis so that all Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) receive the same price per US Holdco Share, subject to rounding up to the nearest whole cent), and any income referable to those US Holdco Shares, after deduction of any applicable costs or fees, brokerage, taxes and charges, at the risk of the Ineligible Foreign Shareholders and Small Parcel Holders' (excluding Excluded Small Parcel Holders) in full satisfaction of the Ineligible Foreign Shareholders' and Small Parcel Holders' rights under this Share Scheme; and

- (iii) remits the net proceeds of sale to the Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) by:
 - (A) making a deposit in Australian dollars into a bank account notified by the Ineligible Foreign Shareholders or Small Parcel Holders (excluding Excluded Small Parcel Holders) to Incannex and recorded in the Incannex Share Register on the Record Date; or
 - (B) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian dollars drawn in the name of the Ineligible Foreign Shareholders and Small Parcel Holders (excluding Excluded Small Parcel Holders) (or in the case of joint holders, in accordance with clause 6.4) by ordinary pre-paid post to the address of that Ineligible Foreign Shareholder and Small Parcel Holder appearing in the Incannex Share Register on the Record Date.
- (d) In the event that the Sale Agent believes, after consultation with Incannex, that an Ineligible Foreign Shareholder or Small Parcel Holder (excluding Excluded Small Parcel Holders) is not known at its address appearing in the Incannex Share Register on the Record Date, the Sale Agent may credit the amount payable to that Ineligible Foreign Shareholder or Small Parcel Holder (as applicable) to a separate bank account of US Holdco to be held until the Ineligible Foreign Shareholder or Small Parcel Holder (as applicable) claims the amount or the interest is dealt with in accordance with unclaimed money legislation, and US Holdco must hold the amount in trust but any amount accruing from the amount will be to the benefit of US Holdco. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Shareholder or Small Parcel Holder (as applicable). US Holdco must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (e) Payment by US Holdco to an Ineligible Foreign Shareholder or Small Parcel Holder in accordance with this clause 6.8 satisfies in full the Ineligible Foreign Shareholder's or Small Parcel Holder's (excluding Excluded Small Parcel Holder's) right to the Share Scheme Consideration.
- (f) None of US Holdco, Incannex or the Sale Agent gives any assurance as to the price that will be achieved for the sale of US Holdco Shares described in this clause 6.8, and the sale of US Holdco Shares under this clause 6.8 will be at the risk of the Ineligible Foreign Shareholder or Small Parcel Holder (as applicable).
- (g) Each Ineligible Foreign Shareholder and Small Parcel Holder appoints Incannex as its agent to take any necessary or appropriate actions, or to receive on its behalf any financial services guide or other notice which may be given by the Sale Agent to the Ineligible Foreign Shareholder or Small Parcel Holder, in connection with its appointment or sales.

7 Dealings in Incannex Shares

7.1 Determination of Share Scheme Participants

To establish the identity of Share Scheme Participants, dealings in Incannex Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Incannex Share Register as holder of the relevant Incannex Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Incannex Share Register is kept.

7.2 Incannex Share Register

Incannex must register any transmission application or transfer received in accordance with clause 7.1 by the Record Date.

7.3 Transfer requests received after Record Date

Incannex will not accept for registration or recognise for any purpose any transfer, transmission or application in respect of Incannex Shares received after the times specified in clause 7.1, or received prior to such times but not in registrable form, other than a transfer to US Holdco in accordance with this Share Scheme.

7.4 No disposals after Record Date

If this Share Scheme becomes Effective, each Share Scheme Participant, and any person claiming through that Share Scheme Participant, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

7.5 Maintenance of Incannex Share Register

Subject to issuance of the Share Scheme Consideration and registration of the transfer to US Holdco in accordance with clause 5.2, any statements of holding in respect of Scheme Shares will cease to have effect on the Record Date as documents of title in respect of those shares. On the Record Date, each entry on the Incannex Share Register (other than entries in respect of the Excluded Shareholders or their successors in title) will cease to have effect except as evidence of entitlement to the Share Scheme Consideration.

7.6 Effect of Holding Statements

Subject to provision of the Share Scheme Consideration and registration of the transfer to US Holdco, any statements of holding in respect of Incannex Shares will cease to have effect after the Record Date as documents of title in respect of those shares. After the Record Date, each entry current on the Incannex Share Register on the Record Date will cease to have effect except as evidence of entitlement to the Share Scheme Consideration.

7.7 Details of Share Scheme Participants

As soon as practicable after the Record Date, and in any event within one Business Day of the Record Date, Incannex will ensure that details of the names, registered addresses and holdings of Incannex Shares for each Share Scheme Participant, as shown in the Incannex Share Register on the Record Date, are available to US Holdco in such form as US Holdco reasonably requires.

7.8 Removal from quotation and de-listing

- (a) Incannex will:
- (i) apply to ASX to suspend trading in Incannex Shares with effect from the close of trading on ASX on the Effective Date; and
 - (ii) apply to NASDAQ to suspend trading in Incannex ADSs (by way of submission of a “corporate action” form to NASDAQ in order to transfer the listing of Incannex ADSs to a listing of US Holdco Shares) from the close of trading on NASDAQ on the Implementation Date.
- (b) With effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date, Incannex will apply:
- (i) for termination of the official quotation of Incannex Shares on ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8 General
8.1 Share Scheme Participant agreements and consents

Each Share Scheme Participant:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to US Holdco in accordance with the terms of the Share Scheme;

- (b) irrevocably consents to Incannex and US Holdco doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Share Scheme and the transactions contemplated by it,

without the need for any further act by that Share Scheme Participant.

8.2 Authority given to Incannex

On this Share Scheme becoming Effective, each Share Scheme Participant, without the need for any further act, is deemed to have irrevocably appointed Incannex (and all of its directors and officers (jointly and severally)) as its attorney and agent for the purposes of:

- (a) enforcing the Share Scheme Deed Poll against US Holdco;
- (b) in the case of Scheme Shares in a CHESS holding:
- (i) causing a message to be transmitted to ASX Settlement in accordance with the ASX Settlement Rules so as to transfer the Scheme Shares held by the Share Scheme Participant from the CHESS sub-register of Incannex to the issuer sponsored sub-register operated by Incannex or its share registry at any time after US Holdco has provided the Share Scheme Consideration which is due under this Share Scheme to Share Scheme Participants; and
- (ii) completing and signing on behalf of Share Scheme Participants any required form of transfer of Scheme Shares;
- (c) in the case of Scheme Shares registered in the issuer sponsored sub-register operated by Incannex or its share registry, completing and signing on behalf of Share Scheme Participants any required form of transfer; and
- (d) doing all things and executing any agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Share Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Share Scheme Transfers) as contemplated by clause 5.2,

and Incannex accepts such appointment. Incannex as attorney and agent of each Share Scheme Participant, may sub delegate its functions, authorities or powers under this clause 8.2 to all or any of its directors and officers (jointly, severally or jointly and severally).

8.3 Further assurances

Each Share Scheme Participant and Incannex will execute documents and do all things and acts necessary or expedient in order to implement this Share Scheme.

8.4 Scheme binding

This Share Scheme binds Incannex and all Share Scheme Participants (including those who do not attend the Share Scheme Meeting, those who do not vote at that meeting or vote against this Share Scheme) and, to the extent of any inconsistency, overrides the constitution of Incannex.

8.5 Variation, cancellation or modification of rights

The Share Scheme Participants agree to the transfer of their Scheme Shares in accordance with this Share Scheme and agree to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted or resulting from this Share Scheme (if any).

8.6 Beneficial entitlement to Scheme Shares

Immediately from the time that US Holdco has satisfied its obligations under clauses 5.4 and 6 pending registration by Incannex of US Holdco in the Incannex Share Register as the holder of the Scheme Shares:

- (a) US Holdco will be beneficially entitled to the Scheme Shares transferred to it under this Share Scheme; and
- (b) each Share Scheme Participant, without the need for any further act by that Share Scheme Participant:
 - (i) irrevocably appoints US Holdco as attorney and agent (and directs US Holdco in each capacity) to appoint any director, officer, secretary or agent nominated by US Holdco as its sole proxy and, where applicable, its corporate representative to attend shareholder meetings of Incannex, exercise the votes attached to the Scheme Shares registered in the name of the Share Scheme Participant and sign any shareholders resolution of Incannex;
 - (ii) undertakes not to otherwise attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than pursuant to clause 8.6(b)(i);
 - (iii) must take all other actions in the capacity of a registered holder of Scheme Shares as US Holdco reasonably directs; and
 - (iv) acknowledges and agrees that in exercising the powers referred to in this clause 8.6(b), any director, officer, secretary or agent nominated by US Holdco may act in the best interests of US Holdco as the intended registered holder of the Scheme Shares.

8.7 Withholding

If US Holdco considers that it must pay an amount to the Commissioner of Taxation (**Commissioner**) under Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**TAA**) in relation to the acquisition of the Scheme Shares from a Share Scheme Participant, US Holdco will:

- (a) determine the amount to be paid to the Commissioner (Withholding Amount) being 12.5% (or a lesser rate approved by the Commissioner) of the Share Scheme Consideration otherwise payable to the Share Scheme Participant or Sale Agent, as appropriate;
- (b) withhold the Withholding Amount from the Share Scheme Consideration (by issuing such lesser number of US Holdco Shares to the Share Scheme Participant or Sale Agent, as appropriate for the Withholding Amount) and remit the Withholding Amount to the Commissioner within the timeframe required under the TAA (and issued of the reduced number of US Holdco Shares shall be taken to be full payment of the Share Scheme Consideration for the purposes of this Share Scheme); and
- (c) if requested in writing by the relevant Share Scheme Participant, provide a receipt or other appropriate evidence of payment of the Withholding Amount to the Commissioner (or procure the provision of such receipt or other evidence) to the relevant Share Scheme Participant.

8.8 Notices

- (a) Where a notice, transfer, transmission application or other communication referred to in this Share Scheme is sent by post to Incannex, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Incannex's registered office or at the office of Incannex's share registry.
- (b) The accidental omission to give notice of the Share Scheme Meeting to any Incannex Shareholders, or the non-receipt of such a notice by any Incannex Shareholders, will not, unless ordered by the Court, invalidate this Share Scheme or the proceedings at the Share Scheme Meeting.

8.9 Alterations and conditions

If the Court proposes to approve this Share Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Incannex may, by its counsel on behalf of all persons concerned, consent to only such of those conditions or alterations to this Share Scheme to which US Holdco has consented, such consent not to be unreasonably withheld or delayed.

8.10 Enforcement of Share Scheme Deed Poll

Incannex undertakes in favour of each Share Scheme Participant that it will enforce the Share Scheme Deed Poll against US Holdco on behalf of and as agent and attorney for the Share Scheme Participants.

8.11 Duty

All duty (including stamp duty), and any related fines, penalties and interest, payable in connection with the transfer by Share Scheme Participants of the Scheme Shares to US Holdco pursuant to the Share Scheme will be payable by US Holdco.

8.12 Limitation of liability

None of Incannex or US Holdco nor any of their respective Representatives are liable for anything done or omitted to be done in the performance of this Share Scheme or the Share Scheme Deed Poll in good faith.

8.13 Governing Law

- (a) This Share Scheme is governed by and will be construed according to the laws of Victoria, Australia.
- (b) Each party irrevocably:
 - (i) submits to the non exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Share Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 8.13(b)(i).

Schedule 2 – Share Scheme Deed Poll

**DEED POLL IN FAVOUR OF SCHEME
PARTICIPANTS**

Incannex Healthcare Limited – Shares

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

DETAILS

Date 13 September 2023

By **US Holdco**
NAME Incannex Healthcare Inc.
ADDRESS 18 East 50th Street, 5th Floor, New York, NY 10022
EMAIL
ATTENTION Joel Latham, Chief Executive Officer

IN FAVOUR OF Each registered holder of fully paid ordinary shares in Incannex Healthcare Limited ACN 096 635 246 of Level 23, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 (**Incannex**) on the Record Date (**Share Scheme Participants**).

BACKGROUND

- A Incannex and US Holdco have entered into a scheme implementation deed dated on or about 10 July 2023 (as amended and restated on 13 September 2023) (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed, Incannex has agreed that it will propose and implement the Share Scheme in accordance with the Scheme Implementation Deed, pursuant to which US Holdco will acquire all of the Scheme Shares.
- C Under the Scheme Implementation Deed, US Holdco has agreed to take all steps reasonably necessary to assist Incannex in proposing and implementing the Share Scheme in accordance with the Scheme Implementation Deed, the Share Scheme and this deed poll (being the Share Scheme Deed Poll).
- D US Holdco is entering into this Share Scheme Deed Poll for the purposes of:
- i) covenanting in favour of the Share Scheme Participants to perform certain of its obligations under the Scheme Implementation Deed;
 - ii) covenanting in favour of the Share Scheme Participants to perform the steps attributed to it under the Share Scheme; and
 - iii) ensuring that the Share Scheme Consideration is provided to the Share Scheme Participants.
- E The effect of the Share Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to US Holdco in exchange for the Share Scheme Consideration.

AGREED TERMS**1 Definitions and interpretation**

1.1 Definitions

In this deed:

Share Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Incannex and Incannex Shareholders together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Incannex and US Holdco.

1.2 Terms defined in Scheme Implementation Deed

Words and phrases defined in the Scheme Implementation Deed have the same meanings in this Share Scheme Deed Poll unless the context requires otherwise.

1.3 Interpretation

- (a) Clause 1.2 of the Share Scheme applies to the interpretation of this Share Scheme Deed Poll, except that references to “this Share Scheme” in that clause are to be read as references to “this Share Scheme Deed Poll”.
- (b) Clause headings in this Share Scheme Deed Poll do not affect the interpretation of this Share Scheme Deed Poll.

1.4 Time for performance

- (a) If the day on or by which a payment or an act is to be done under this Share Scheme Deed Poll is not a Business Day, that act must be done on the next Business Day.
- (b) In this Share Scheme Deed Poll, if a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (c) In this Share Scheme Deed Poll, a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (d) In this Share Scheme Deed Poll a reference to time is a reference to Melbourne, Australia time.

2 Nature of this Share Scheme Deed Poll

US Holdco acknowledges that:

- (a) this Share Scheme Deed Poll may be relied on and enforced by any Share Scheme Participant in accordance with its terms, even though the Share Scheme Participants are not party to it; and
- (b) under the Share Scheme, each Share Scheme Participant irrevocably appoints Incannex and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Share Scheme Deed Poll against US Holdco.

3 Condition

3.1 Condition

The obligations of US Holdco under this Share Scheme Deed Poll are subject to the Share Scheme becoming Effective.

3.2 Termination

The obligations of US Holdco under this Share Scheme Deed Poll to Share Scheme Participants will automatically terminate and the terms of this Share Scheme Deed Poll will be of no further force or effect, if and only if the Scheme Implementation Deed is terminated in accordance with its terms or the Share Scheme does not become Effective on or before the End Date, unless US Holdco and Incannex otherwise agree in writing.

3.3 Consequences of termination

If this Share Scheme Deed Poll is terminated under clause 3.2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) US Holdco is released from its obligations to further perform this Share Scheme Deed Poll except for any obligations which by their nature survive termination; and
- (b) each Share Scheme Participant retains the powers and remedies they have against US Holdco in respect of any breach of this Share Scheme Deed Poll which occurs before it is terminated.

4 Share Scheme obligations

Subject to clause 3, US Holdco undertakes in favour of each Share Scheme Participant to:

- (a) issue and provide to the Share Scheme Participant (or to the Sale Agent on behalf of the Share Scheme Participant in accordance with the Share Scheme) the Share Scheme Consideration for each Scheme Share held by each Share Scheme Participant; and
- (b) undertake all other actions attributed to it under the Share Scheme and do all acts and things necessary or desirable on its part to give full effect to the Share Scheme,

all in accordance with the terms of the Share Scheme and the Scheme Implementation Deed.

5 Warranties

US Holdco represents and warrants to each Share Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Share Scheme Deed Poll and to carry out the transactions contemplated by this Share Scheme Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Share Scheme Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Share Scheme Deed Poll and to carry out the transactions contemplated by this Share Scheme Deed Poll;
- (d) this Share Scheme Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it; and
- (e) the execution and performance by it of this Share Scheme Deed Poll and each transaction contemplated by this Share Scheme Deed Poll did not and will not violate in any respect a provision of:
 - (i) a law, judgement, ruling, order or decree being on it; or
 - (ii) its constitution or other constituent documents.

6 Continuing obligations

This Share Scheme Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) US Holdco having fully performed its obligations under this Share Scheme Deed Poll; or
- (b) termination of this Share Scheme Deed Poll under clause 3.2.

7 Miscellaneous

7.1 Assignment

- (a) The rights and obligations of US Holdco and each Share Scheme Participant under this Share Scheme Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior written consent of US Holdco and Incannex.
- (b) Any purported dealing in contravention of clause 7.1(a) is invalid.

7.2 Cumulative rights

The rights, powers and remedies of US Holdco and the Share Scheme Participant under this Share Scheme Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Share Scheme Deed Poll.

7.3 Further assurances

US Holdco will, at its own expense, do all things reasonably required of it by law to give full effect to this Share Scheme Deed Poll and the transactions contemplated by it.

7.4 Governing law

- (a) This Share Scheme Deed Poll is governed by and will be construed according to the laws of Victoria, Australia.
- (b) US Holdco irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Share Scheme Deed Poll; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 7.4(b)(i).

7.5 Notices

Any notice or other communication to US Holdco under or in connection with this Share Scheme Deed Poll must be in writing and:

- (a) sent to US Holdco at:
 - Address 18 East 50th Street, 5th Floor, New York, NY 10022
 - E-mail
 - Attention Joel Latham, Chief Executive Officer

(or at any such other address or email address notified for this purpose by US Holdco to Incannex from time to time);
- (b) must be signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;
- (c) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5(a); and
- (d) will be deemed to have been given:
 - (i) if delivered, on the date of delivery; or

- (i) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (ii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

7.6 **Costs**

- (a) US Holdco must bear its own costs arising out of the negotiation, preparation and execution of this Share Scheme Deed Poll.
- (b) US Holdco:
 - (i) must pay all duty (including stamp duty) and any related fines, penalties and interest in respect of the Share Scheme and this Share Scheme Deed Poll (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Share Scheme), the performance of this Share Scheme Deed Poll and each transaction effected by or made under or pursuant to the Share Scheme and this Share Scheme Deed Poll; and
 - (ii) indemnifies each Share Scheme Participant against any liability arising from failure to comply with clause 7.6(b)(i).

7.7 **Variation**

- (a) A provision of this Share Scheme Deed Poll may not be varied, altered or otherwise amended unless:
 - (i) before the Second Court Date, the variation, alteration or amendment is agreed to in writing by Incannex (which such agreement may be given or withheld without reference to or approval by any Incannex Shareholder); or
 - (ii) on or after the Second Court Date, the variation, alteration or amendment is agreed to in writing by Incannex and is approved by the Court (which such agreement may be given or withheld without reference to or approval by any Incannex Shareholder),

in which event US Holdco will enter into a further deed poll in favour of each Share Scheme Participant giving effect to the variation, alteration or amendment.

7.8 **Waiver**

- (a) A provision of or right under this Share Scheme Deed Poll may not be waived except in writing signed by the person granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this Share Scheme Deed Poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Share Scheme Deed Poll,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) US Holdco is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Share Scheme Deed Poll or on a default under this Share Scheme Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) US Holdco may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.

Executed as a deed poll

Executed by an authorised signatory of
Incannex Healthcare Inc.

/s/ Joel Latham

Signature of authorised person

JOEL LATHAM

Name of authorised person
BLOCK LETTERS

CHIEF EXECUTIVE OFFICER

Title of authorised person

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

Schedule 3 – Option Scheme of Arrangement

**SCHEME OF ARRANGEMENT MADE
UNDER SECTION 411 OF THE
CORPORATIONS ACT 2001 (CTH)**

Incannex Healthcare Limited – Options

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

DETAILS

Parties **Incannex Healthcare Limited** ACN 096 635 246 of Level 23, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 (**Incannex**)
AND

The registered holders of options issued by Incannex to acquire fully paid ordinary shares in the capital of Incannex as at 7:00pm on the Record Date (**Option Scheme Participants**)

1 Defined terms & interpretation

1.1 Defined terms

In this Option Scheme, except where the context otherwise requires:

ADS means an American Depositary Share.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires.

Business Day means a business day as defined in the Listing Rules and, to the extent any action must be taken in relation to NASDAQ, a day on which NASDAQ is operating but excludes a day that is a Saturday, Sunday, bank holiday or public holiday in Melbourne, Victoria or New York, United States of America.

Conditions Precedent means the conditions precedent to this Option Scheme set out in clause 3.2 of the Scheme Implementation Deed.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court of competent jurisdiction under the Corporations Act.

Effective means:

- (a) when used in relation to the Option Scheme, the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Option Scheme taking effect pursuant to section 411(10) of the Corporations Act, but in any event at no time before an office copy of the order of the Court is lodged with ASIC; and
- (b) when used in relation to the Share Scheme, the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Share Scheme taking effect pursuant to section 411(10) of the Corporations Act, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Option Scheme becomes Effective.

Eligible Jurisdictions means Australia, Canada, Germany, Hong Kong, Indonesia, Italy, Japan, Netherlands, New Zealand, Philippines, Singapore, United Kingdom and the United States and such other jurisdictions as agreed in writing between Incannex and Incannex US from time to time.

Encumbrance means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement and any other security arrangement of any kind given or created and including any possessory lien in the ordinary course of business whether arising by law or contract.

End Date means 29 February 2024, or such later date as agreed to in writing between Incannex and US Holdco from time to time.

Implementation Date means the fifth Business Day after the Record Date, or such other date agreed to in writing by Incannex and US Holdco.

Incannex Option means an option issued by Incannex to acquire an Incannex Share.

Incannex Option Register means the register of Incannex optionholders maintained by or on behalf of Incannex in accordance with the Corporations Act.

Incannex Optionholder means a person who is registered in the Incannex Option Register as the holder of one or more Incannex Options from time to time.

Incannex Share means a fully paid ordinary share issued in the capital of Incannex.

Incannex Share Register means the register of Incannex shareholders maintained by or on behalf of Incannex in accordance with the Corporations Act.

Incannex Shareholder means a person who is registered in the Incannex Share Register as the holder of one or more Incannex Shares, from time to time.

Ineligible Foreign Optionholder means any Option Scheme Participant whose address shown on the Incannex Option Register is a place outside the Eligible Jurisdictions, unless, no less than three Business Days prior to the Option Scheme Meeting, Incannex and US HoldCo agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Incannex Optionholder with the US HoldCo Options when the Option Scheme becomes Effective.

Listing Rules means the official listing rules of the ASX.

NASDAQ means the NASDAQ Stock Market LLC.

Option Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Incannex and Incannex Optionholders, as set out in this document, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by US Holdco and Incannex.

Option Scheme Consideration means the consideration to be provided by US Holdco to each Option Scheme Participant for the cancellation of each Scheme Option under the Option Scheme in accordance with clause 6.3 of this Option Scheme.

Option Scheme Deed Poll means the deed poll executed by US Holdco, substantially in the form of Schedule 4 to the Scheme Implementation Deed.

Option Scheme Meeting means the meeting of Incannex Optionholders convened by the Court in relation to the Option Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

Option Scheme Order means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.6, section 411(6) of the Corporations Act) in relation to this Option Scheme.

Option Scheme Participant means each person who is an Incannex Optionholder on the Record Date.

Record Date means 7:00pm on the second Business Day following the Effective Date, or such other date (after the Effective Date) as Incannex and US Holdco may agree in writing.

Representative means:

- (a) in relation to Incannex, any director, officer or employee of any member of Incannex and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Incannex in relation to the Schemes; and

- (b) in relation to US Holdco, any director, officer or employee of any member of US Holdco and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to US Holdco in relation to the Schemes.

Scheme Implementation Deed means the scheme implementation deed dated on or about 10 July 2023 between Incannex and US Holdco, as amended or varied from time to time.

Scheme Option means all of the Incannex Options on issue on the Record Date.

Schemes means the Share Scheme and this Option Scheme.

Second Court Date means the first day on which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Share Scheme and Option Scheme is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

Share Scheme has the meaning given to that term in the Scheme Implementation Deed.

Share Scheme Order means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to terms of the Share Scheme, section 411(6) of the Corporations Act) in relation to the Share Scheme.

US Holdco means Incannex Healthcare Inc., a corporation incorporated in the State of Delaware, United States of America and whose principal business address is 18 East 50th Street, 5th Floor, New York, NY 10022.

US Holdco Option means an option issued by US Holdco to acquire a US Holdco Share.

US Holdco Option Register means the register of US Holdco optionholders maintained by or on behalf US Holdco and maintained in accordance with the Delaware General Corporation Law.

US Holdco Optionholder means a person who is registered in US Holdco Option Register as the holder of one or more US Holdco Options, from time to time.

US Holdco Share means a share of common stock of US Holdco.

1.2 Interpretation

In this Option Scheme:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this document includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (f) a reference to US\$ or USD is to the lawful currency of the United States;
- (g) a reference to time is to time in Melbourne, Victoria time, unless otherwise noted;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 Preliminary

2.1 Incannex

- (a) Incannex is a public company limited by shares incorporated in Australia and registered in Western Australia.
- (b) Incannex is admitted to the official list of ASX and its shares, being the Incannex Shares, are officially quoted on the securities market conducted by ASX. Incannex is also admitted to NASDAQ and Incannex ADSs are quoted on NASDAQ.
- (c) The Incannex Options are not quoted on ASX.
- (d) Incannex's registered office is at Level 23, Rialto South Tower, 525 Collins Street, Melbourne 3000 Victoria Australia.

2.2 US Holdco

US Holdco is a company incorporated under the laws of Delaware in the United States of America. US Holdco's principal business office is at 18 East 50th Street, 5th Floor, New York, NY 10022.

2.3 Agreement to implement this Option Scheme

Incannex and US Holdco have agreed, by executing the Scheme Implementation Deed, to implement the terms of this Option Scheme and the steps contemplated to follow the implementation of this Option Scheme, to the extent those steps are required to be done by each of them.

2.4 Option Scheme Deed Poll

- (a) This Option Scheme attributes actions to US Holdco but does not itself impose an obligation on US Holdco to perform those actions. US Holdco has undertaken in favour of each Option Scheme Participant, by executing the Option Scheme Deed Poll, that it will fulfil its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to this Option Scheme, including to issue to each Option Scheme Participant (other than Ineligible Foreign Optionholders) the Option Scheme Consideration for each Scheme Option held by the Option Scheme Participant.

- (b) Incannex undertakes in favour of each Option Scheme Participant to enforce the Option Scheme Deed Poll against US Holdco on behalf of and as agent and attorney for the Option Scheme Participants.

2.5 Summary of Option Scheme

If this Option Scheme becomes Effective:

- (a) all of the Scheme Options held by Option Scheme Participants on the Record Date will be cancelled;
- (b) in consideration for the cancellation of the Scheme Options, each Option Scheme Participant that is not an Ineligible Foreign Optionholder will receive the Option Scheme Consideration in accordance with the terms of the Scheme Implementation Deed, this Option Scheme and the Option Scheme Deed Poll;
- (c) the Scheme Options held by Option Scheme Participants that are Ineligible Foreign Optionholders will be cancelled for nil consideration;
- (d) it will bind Incannex and all Option Scheme Participants, including those who do not attend the Option Scheme Meeting, those who do not vote at the Option Scheme Meeting and those who vote against this Option Scheme at the Option Scheme Meeting; and
- (e) it will override the constitution of Incannex, to the extent of any inconsistency.

3 Conditions precedent

3.1 Conditions precedent

This Option Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions:

- (a) all of the Conditions Precedent being satisfied or waived (other than the conditions in clauses 3.2(c) (**Court Approval of Option Scheme**), 3.2(f) (**Option Scheme Orders lodged with ASIC**) of the Scheme Implementation Deed) in accordance with the Scheme Implementation Deed by the times set out in the Scheme Implementation Deed;
- (b) as at 8:00 am on the Second Court Date, the Scheme Implementation Deed not having been terminated in accordance with its terms;
- (c) as at 8:00 am on the Second Court Date, the Option Scheme Deed Poll not having been terminated in accordance with its terms;
- (d) approval of the Share Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act, with respect to all securities to be offered, issued or sold by US Holdco under the Share Scheme;
- (e) approval of the Option Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act, with respect to all securities to be offered, issued or sold by US Holdco under the Option Scheme;
- (f) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Option Scheme and agreed to by Incannex and US Holdco as having been satisfied or waived;
- (g) lodgement with ASIC of an office copy of the order of the Court approving the Option Scheme pursuant to section 411(10) of the Corporations Act;
- (h) the Option Scheme Order comes into effect, pursuant to section 411(10) of the Corporations Act; and
- (i) the Share Scheme Order comes into effect, pursuant to section 411(10) of the Corporations Act.

3.2 **Effect of Conditions Precedent**

The satisfaction of each condition in clauses 3.1(a) to 3.1(i) (inclusive) of this Option Scheme (**Condition**) is a condition precedent to the operation of this Option Scheme.

3.3 **Certificate**

- (a) Incannex and US Holdco will provide to the Court on the Second Court Date a certificate signed by US Holdco and Incannex (or such other evidence as the Court requests):
 - (i) stating whether or not the Conditions Precedent have been satisfied or waived (other than the Conditions Precedent in clauses 3.2(c), 3.2(e) and 3.2(f) of the Scheme Implementation Deed) as at 8:00am on the Second Court Date; and
 - (ii) confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(b) and 3.1(c) of this Option Scheme have been satisfied or waived as at 8:00am on the Second Court Date.
- (b) The certificate referred to in clause 3.3(a) will constitute conclusive evidence of whether such Conditions Precedent have been satisfied or waived as at 8:00am on the Second Court Date.

4 **The Option Scheme**

4.1 **Effective Date**

Subject to clause 4.2, this Option Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 **End Date**

Without limiting any rights under the Scheme Implementation Deed, this Option Scheme will lapse and be of no further force or effect (and US Holdco is released from any obligations and any liability in connection with this Option Scheme and the Option Scheme Deed Poll) if:

- (a) the Effective Date has not occurred on or before the End Date; or
 - (b) the Scheme Implementation Deed or the Option Scheme Deed Poll is terminated in accordance with its terms,
- unless Incannex or US Holdco otherwise agree in writing (and, if required, as approved by the Court).

5 **Implementation of the Option Scheme**

5.1 **Lodgement of Option Scheme Order with ASIC**

Incannex will lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Option Scheme Order as soon as practicable, and in any event by no later than 5:00pm on the first Business Day after the date on which the Court makes that Option Scheme Order (or on such other Business Day as Incannex and US Holdco agree).

5.2 **Cancellation of Scheme Options**

Subject to the Option Scheme becoming Effective and the issue of Option Scheme Consideration in accordance with clause 6, on the Implementation Date immediately following the issue of Option Scheme Consideration to Option Scheme Participants that are not Ineligible Foreign Optionholders:

- (a) the Scheme Options, together with all rights and entitlements attaching to them as at the Implementation Date, will be cancelled without the need for any further act by any Incannex Optionholder; and

- (b) Incannex must update the Incannex Option Register to reflect the cancellation.

5.3 Entitlement to Option Scheme Consideration

Subject to this Option Scheme becoming Effective, in consideration of the cancellation of the Scheme Options, and subject to the other terms and conditions of this Option Scheme, on the Implementation Date each Option Scheme Participant (other than Ineligible Foreign Optionholders) will be issued the Option Scheme Consideration in respect of the Scheme Options held by them on the Record Date in accordance with clause 6 of this Option Scheme.

6 Option Scheme Consideration

6.1 Option Scheme Consideration

On the Implementation Date, Incannex must procure US Holdco to issue the Option Scheme Consideration to the Option Scheme Participants in accordance with clause 6.3 of this Option Scheme.

6.2 Rounding entitlements

Where the calculation of the number of US Holdco Options to be issued to a particular Option Scheme Participant would result in the issue of a fraction of a US Holdco Option, then any such fractional entitlement will be rounded up to the nearest whole number of US Holdco Options.

6.3 Issue of Option Scheme Consideration

- (a) Not later than one Business Day after the Record Date, Incannex will give to US Holdco a notice specifying the persons to whom US Holdco Options are to be issued pursuant to clause 5.3 and the number of US Holdco Options to which they are entitled.
- (b) On the Implementation Date, in consideration for the Option Scheme Participants agreeing to cancel their respective Scheme Options under the terms of this Option Scheme, Incannex will procure the issue of one US Holdco Option to each Option Scheme Participant for every 100 Scheme Options held by that Option Scheme Participant on the Record Date (**Option Scheme Consideration**).

6.4 Joint holders

In the case of Scheme Options held in joint names:

- (a) US Holdco Options to be issued under this Option Scheme will be issued to and registered in the names of the joint holders; and
- (b) any other document required to be sent under this Option Scheme will be forwarded to the registered address recorded in the Incannex Option Register.

6.5 Ineligible Foreign Optionholders

US Holdco has no obligation under this Option Scheme to issue any Option Scheme Consideration to Ineligible Foreign Optionholders, and will not issue any Option Scheme Consideration (in the form of US Holdco Options) in the name of any Ineligible Foreign Optionholder and, instead, any Scheme Options held by Ineligible Foreign Optionholders on the Record Date will be cancelled for nil consideration.

6.6 Terms of US Holdco Options

Each US Holdco Option issued as Option Scheme Consideration in accordance with the Option Scheme and the Option Scheme Deed Poll will:

- (a) have an exercise price per US Holdco Share equal to 100 times the exercise price per Incannex Share of the relevant Scheme Option it replaces, converted from Australian dollars to US dollars at the prevailing currency exchange rate on the Implementation Date, as reasonably determined by Incannex;

- (b) have an exercise period equal to the unexpired exercise period of the relevant Scheme Option it replaces;
- (c) have the same terms as to vesting as the relevant Scheme Option it replaces; and
- (d) otherwise be on the same terms as the Scheme Option it replaces, with necessary changes due to US Holdco being the issuer in place of Incannex.

6.7 Option Scheme Participants' agreement

If the Option Scheme becomes Effective:

- (a) each Option Scheme Participant that is not an Ineligible Foreign Optionholder will be deemed to have agreed:
 - (i) to become a US Holdco Optionholder and to have accepted the US Holdco Options issued to that Option Scheme Participant under this Option Scheme;
 - (ii) to the cancellation of their Scheme Options in consideration for receiving that Option Scheme Participant receiving the Option Scheme Consideration, in accordance with the terms of this Option Scheme;
 - (iii) to have their name and address entered into the US Holdco Option Register; and
 - (iv) to be bound by the certificate of incorporation and bylaws of US Holdco as in force from time to time in respect of US Holdco Options; and
- (b) each Option Scheme Participant that is an Ineligible Foreign Optionholder will be deemed to have agreed to the cancellation of their Scheme Options for nil consideration in accordance with the terms of this Option Scheme.

6.8 Warranty by Option Scheme Participants

Each Option Scheme Participant warrants to US Holdco and is deemed to have authorised Incannex to warrant to US Holdco as agent and attorney for the Option Scheme Participant by virtue of this clause 6.8, that:

- (a) all their Scheme Options (including any rights and entitlements attaching to those options) cancelled under the Option Scheme will, as at the date of the cancellation, be free from all Encumbrances; and
- (b) they have full power and capacity to deal with their Scheme Options (including any rights and entitlements attaching to those Scheme Options).

7 Dealings in Incannex Options

7.1 Determination of Option Scheme Participants

Each Option Scheme Participant will be entitled to participate in the Option Scheme.

7.2 Exercise of Incannex Options

- (a) Incannex must issue, and register the relevant Incannex Optionholder as the holder of, Incannex Shares resulting from the valid exercise of an Incannex Option which is received on or before 5.00pm on the Business Day immediately prior to the Record Date.

- (b) Incannex will not accept for registration or recognise for any purpose any exercise of an Incannex Option receive after 5.00pm on the Business Day immediately prior to the Record Date and, after such time, the Incannex Options will not be capable of exercise notwithstanding the terms on which the Incannex Options were granted.

7.3 No disposals after Record Date

If this Option Scheme becomes Effective, each Option Scheme Participant, and any person claiming through that Option Scheme Participant, must not dispose of or purport or agree to dispose of any Scheme Options or any interest in them after the Record Date.

7.4 Maintenance of Incannex Option Register

For the purpose of determining entitlements to the Option Scheme Consideration, Incannex will, until the Option Scheme Consideration has been paid to Option Scheme Participants, maintain the Incannex Option Register in accordance with this clause 7. The Incannex Option Register in this form will solely determine the entitlements to the Option Scheme Consideration.

7.5 Effect of Incannex Option Register

Each entry on the Incannex Option Register as at the Record Date will cease to have any effect other than as evidence of an entitlement of Option Scheme Participants to the Option Scheme Consideration.

8 General

8.1 Option Scheme Participant agreements and consents

Each Option Scheme Participant:

- (a) irrevocably agrees to the cancellation of its Scheme Options together with all rights and entitlements attaching to those Scheme Options in accordance with the terms of this Option Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification (if any) of the rights attached to its Scheme Options constituted by or resulting from this Option Scheme.
- (c) irrevocably consents to Incannex and US Holdco doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Option Scheme and the transactions contemplated by it,

without the need for any further act by that Option Scheme Participant.

8.2 Authority given to Incannex

On this Option Scheme becoming Effective, each Option Scheme Participant, without the need for any further act, is deemed to have irrevocably appointed Incannex (and all of its directors and officers (jointly and severally)) as its attorney and agent for the purposes of:

- (a) enforcing the Option Scheme Deed Poll against US Holdco; and
- (b) executing any document or doing any other act necessary or desirable to give full effect to this Option Scheme and the transactions contemplated by it,

and Incannex accepts such appointment. Incannex as attorney and agent of each Option Scheme Participant, may sub delegate its functions, authorities or powers under this clause 8.2 to all or any of its directors and officers (jointly, severally or jointly and severally).

8.3 Further assurances

Each Option Scheme Participant and Incannex will execute documents and do all things and acts necessary or expedient in order to implement this Option Scheme.

8.4 **Scheme binding**

This Option Scheme binds Incannex and all Option Scheme Participants (including those who do not attend the Option Scheme Meeting, those who do not vote at that meeting or vote against this Option Scheme) and, to the extent of any inconsistency, overrides the constitution of Incannex.

8.5 **Notices**

- (a) Where a notice, transfer, transmission application or other communication referred to in this Option Scheme is sent by post to Incannex, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Incannex's registered office or at the office of the Incannex share registry.
- (b) The accidental omission to give notice of the Option Scheme Meeting to any Incannex Optionholder, or the non-receipt of such a notice by any Incannex Optionholder, will not, unless ordered by the Court, invalidate this Option Scheme or the proceedings at the Option Scheme Meeting.

8.6 **Alterations and conditions**

If the Court proposes to approve this Option Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Incannex may, by its counsel on behalf of all persons concerned, consent to only such of those conditions or alterations to this Option Scheme to which US Holdco has consented, such consent not to be unreasonably withheld or delayed.

8.7 **Enforcement of Option Scheme Deed Poll**

Incannex undertakes in favour of each Option Scheme Participant that it will enforce the Option Scheme Deed Poll against US Holdco on behalf of and as agent and attorney for the Option Scheme Participants.

8.8 **Duty**

All duty (including stamp duty), and any related fines, penalties and interest, payable in connection with the cancellation of the Scheme Options by the Option Scheme Participants pursuant to the Option Scheme will be payable by US Holdco.

8.9 **Limitation of liability**

None of Incannex or US Holdco nor any of their respective Representatives are liable for anything done or omitted to be done in the performance of this Option Scheme or the Option Scheme Deed Poll in good faith.

8.10 **Governing Law**

- (a) This Option Scheme is governed by and will be construed according to the laws of Victoria.
- (b) Each party irrevocably:
 - (i) submits to the non exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (i) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 8.10(b)(i).

Schedule 4 – Option Scheme Deed Poll

DEED POLL IN FAVOUR OF OPTION SCHEME PARTICIPANTS

Incannex Healthcare Limited – Options

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

DETAILS

Date 13 September 2023

By **US Holdco**
NAME Incannex Healthcare Inc.
ADDRESS 18 East 50th Street, 5th Floor, New York, NY 10022
EMAIL
ATTENTION Joel Latham, Chief Executive Officer

IN FAVOUR OF Each registered holder of options to acquire fully paid ordinary shares in Incannex Healthcare Limited ACN 096 635 246 of Level 23, Rialto South Tower, 525 Collins Street, Melbourne VIC 3000 (**Incannex**) on the Record Date (**Option Scheme Participants**).

BACKGROUND

- A Incannex and US Holdco have entered into a scheme implementation deed dated on or about 10 July 2023 (as amended and restated on 13 September 2023) (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed, Incannex has agreed that it will propose and implement the Option Scheme in accordance with the Scheme Implementation Deed, pursuant to which US Holdco will acquire all of the Scheme Options.
- C Under the Scheme Implementation Deed, US Holdco has agreed to take all steps reasonably necessary to assist Incannex in proposing and implementing the Option Scheme in accordance with the Scheme Implementation Deed, the Option Scheme and this deed poll (being the Option Scheme Deed Poll).
- D US Holdco is entering into this Option Scheme Deed Poll for the purposes of:
- i) covenanting in favour of the Option Scheme Participants to perform certain of its obligations under the Scheme Implementation Deed;
 - ii) covenanting in favour of the Option Scheme Participants to perform the steps attributed to it under the Option Scheme; and
 - iii) ensuring that the Option Scheme Consideration is provided to the Option Scheme Participants (other than Ineligible Foreign Optionholders).
- E The effect of the Option Scheme will be that the Scheme Options, together with all rights and entitlements attaching to them, will be cancelled in exchange for the Option Scheme Consideration or, in relation to Option Scheme Participants that are Ineligible Foreign Optionholders, for nil consideration.

AGREED TERMS**1 Definitions and interpretation**

1.1 Definitions

In this deed poll:

Option Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Incannex and Incannex Optionholders together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Incannex and US Holdco.

1.2 Terms defined in Scheme Implementation Deed

Words and phrases defined in the Scheme Implementation Deed have the same meanings in this Option Scheme Deed Poll unless the context requires otherwise.

1.3 Interpretation

- (a) Clause 1.2 of the Option Scheme applies to the interpretation of this Option Scheme Deed Poll, except that references to “this Option Scheme” in that clause are to be read as references to “this Option Scheme Deed Poll”.
- (b) Clause headings in this Option Scheme Deed Poll do not affect the interpretation of this Option Scheme Deed Poll.

1.4 Time for performance

- (a) If the day on or by which a payment or an act is to be done under this Option Scheme Deed Poll is not a Business Day, that act must be done on the next Business Day.
- (b) In this Option Scheme Deed Poll, if a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (c) In this Option Scheme Deed Poll, a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (d) In this Option Scheme Deed Poll a reference to time is a reference to Melbourne, Australia time.

2 Nature of this Option Scheme Deed Poll

US Holdco acknowledges that:

- (a) this Option Scheme Deed Poll may be relied on and enforced by any Option Scheme Participant in accordance with its terms, even though the Option Scheme Participants are not party to it; and
- (b) under the Option Scheme, each Option Scheme Participant irrevocably appoints Incannex and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Option Scheme Deed Poll against US Holdco.

3 Condition

3.1 Condition

The obligations of US Holdco under this Option Scheme Deed Poll are subject to the Option Scheme becoming Effective.

3.2 Termination

The obligations of US Holdco under this Option Scheme Deed Poll to Option Scheme Participants will automatically terminate and the terms of this Option Scheme Deed Poll will be of no further force or effect, if and only if the Scheme Implementation Deed is terminated in accordance with its terms or the Option Scheme does not become Effective on or before the End Date, unless US Holdco and Incannex otherwise agree in writing.

3.3 Consequences of termination

If this Option Scheme Deed Poll is terminated under clause 3.2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) US Holdco is released from its obligations to further perform this Option Scheme Deed Poll except for any obligations which by their nature survive termination; and

- (b) each Option Scheme Participant retains the powers and remedies they have against US Holdco in respect of any breach of this Option Scheme Deed Poll which occurs before it is terminated.

4 Option Scheme obligations

Subject to clause 3, US Holdco undertakes in favour of each Option Scheme Participant to:

- (a) unless the Option Scheme Participant is an Ineligible Foreign Optionholder, issue and provide to the Option Scheme Participant the Option Scheme Consideration for each Scheme Option held by each Option Scheme Participant; and
- (b) undertake all other actions attributed to it under the Option Scheme and do all acts and things necessary or desirable on its part to give full effect to the Option Scheme,

all in accordance with the terms of the Option Scheme and the Scheme Implementation Deed.

5 Warranties

US Holdco represents and warrants to each Option Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Option Scheme Deed Poll and to carry out the transactions contemplated by this Option Scheme Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Option Scheme Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Option Scheme Deed Poll and to carry out the transactions contemplated by this Option Scheme Deed Poll;
- (d) this Option Scheme Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it; and
- (e) the execution and performance by it of this Option Scheme Deed Poll and each transaction contemplated by this Option Scheme Deed Poll did not and will not violate in any respect a provision of:
- (i) a law, judgement, ruling, order or decree being on it; or
- (ii) its constitution or other constituent documents.

6 Continuing obligations

This Option Scheme Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) US Holdco having fully performed its obligations under this Option Scheme Deed Poll; or
- (b) termination of this Deed Poll under clause 3.2.

7 Miscellaneous

7.1 Assignment

- (a) The rights and obligations of US Holdco and each Option Scheme Participant under this Option Scheme Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior written consent of US Holdco and Incannex.
- (b) Any purported dealing in contravention of clause 7.1(a) is invalid.

7.2 Cumulative rights

The rights, powers and remedies of US Holdco and the Option Scheme Participant under this Option Scheme Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Option Scheme Deed Poll.

7.3 Further assurances

US Holdco will, at its own expense, do all things reasonably required of it by law to give full effect to this Option Scheme Deed Poll and the transactions contemplated by it.

7.4 Governing law

- (a) This Option Scheme Deed Poll is governed by and will be construed according to the laws of Victoria, Australia.
- (b) US Holdco irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Option Scheme Deed Poll; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 7.4(b)(i).

7.5 Notices

Any notice or other communication to US Holdco under or in connection with this Option Scheme Deed Poll must be in writing and:

- (a) sent to US Holdco at:
 - Address: 18 East 50th Street, 5th Floor, New York, NY 10022
 - E-mail:
 - For the attention of: Joel Latham, Chief Executive Officer(or at any such other address or email address notified for this purpose by US Holdco to Incannex from time to time);
- (b) must be signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;
- (c) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5(a); and
- (d) will be deemed to have been given:
 - (i) if delivered, on the date of delivery; or

- (i) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (ii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

7.6 **Costs**

- (a) US Holdco must bear its own costs arising out of the negotiation, preparation and execution of this Option Scheme Deed Poll.
- (b) US Holdco:
 - (i) must pay all duty (including stamp duty) and any related fines, penalties and interest in respect of the Option Scheme and this Option Scheme Deed Poll (including without limitation the cancellation of Scheme Options pursuant to the Option Scheme), the performance of this Option Scheme Deed Poll and each transaction effected by or made under or pursuant to the Option Scheme and this Option Scheme Deed Poll; and
 - (ii) indemnifies each Option Scheme Participant against any liability arising from failure to comply with clause 7.6(b)(i).

7.7 **Variation**

- (a) A provision of this Option Scheme Deed Poll may not be varied, altered or otherwise amended unless:
 - (i) before the Second Court Date, the variation, alteration or amendment is agreed to in writing by Incannex (which such agreement may be given or withheld without reference to or approval by any Incannex Optionholder); or
 - (ii) on or after the Second Court Date, the variation, alteration or amendment is agreed to in writing by Incannex and is approved by the Court (which such agreement may be given or withheld without reference to or approval by any Incannex Optionholder),

in which event US Holdco will enter into a further deed poll in favour of each Option Scheme Participant giving effect to the variation, alteration or amendment.

7.8 **Waiver**

- (a) A provision of or right under this Option Scheme Deed Poll may not be waived except in writing signed by the person granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this Option Scheme Deed Poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Option Scheme Deed Poll,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) US Holdco is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Option Scheme Deed Poll or on a default under this Option Scheme Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) US Holdco may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.

Executed as a deed poll

Executed by an authorised signatory of
Incannex Healthcare Inc.

/s/ Joel Latham

Signature of authorised person

Joel Latham

Name of authorised person

Chief Executive Officer

Title of authorised person

Scheme Implementation Deed

DMS:YXG: 5412447
Legal/83374955_3

**Amended and Restated Certificate of Incorporation
of
Incannex Healthcare Inc.**

Incannex Healthcare Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is "Incannex Healthcare Inc." The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 5, 2023 (the "Original Certificate").
2. The Corporation has not received any payment for any of its stock.
3. This Amended and Restated Certificate of Incorporation amends, restates and integrates provisions of the Original Certificate that was duly adopted in accordance with the provisions of Sections 241 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").
4. The text of the Original Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

**ARTICLE I
NAME**

The name of the Corporation is Incannex Healthcare Inc.

**ARTICLE II
AGENT**

The address of the Corporation's registered office in the State of Delaware is address is 850 New Burton Road, Suite 201, Dover, DE 19904, and the name of the Corporation's registered agent at such address is Cogency Global Inc.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV
STOCK**

Section 4.1 Authorized Stock. The total number of shares that the Corporation shall have authority to issue is 110,000,000 shares, of which 100,000,000 shares shall be designated as common stock, par value \$0.0001 per share (the "Common Stock"), and 10,000,000 shares shall be designated as preferred stock, par value \$0.0001 per share (the "Preferred Stock").

Section 4.2 Common Stock.

(a) Voting Rights. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(b) Dividends. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive any dividends to the extent permitted by law when, as and if declared by the board of directors of the Corporation (the "Board").

(c) Liquidation. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

Section 4.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article (including any Preferred Stock Designation), the Board is authorized to provide by resolution and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

Section 4.4 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL.

ARTICLE V
BOARD OF DIRECTORS

Section 5.1 Number. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), the Board of Directors shall consist of such number of directors as shall be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the total number of directors then authorized.

The name and mailing address of each person who is to serve as a director of the Corporation until the first annual meeting of the stockholders or until their successors are elected and qualified are as follows:

<u>Name</u>	<u>Mailing Address</u>
Joel Latham	Suite 105, 8 Century Circuit Norwest, NSW 2153, Australia
Troy Valentine	Suite 105, 8 Century Circuit Norwest, NSW 2153, Australia
Peter Widdows	Suite 105, 8 Century Circuit Norwest, NSW 2153, Australia
George Anastassov	Suite 105, 8 Century Circuit Norwest, NSW 2153, Australia
Robert Clark	Suite 105, 8 Century Circuit Norwest, NSW 2153, Australia

Section 5.2 Classification.

(a) Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation) (the “Preferred Stock Directors”), the Board shall be divided into three classes designated Class I, Class II and Class III. Class I directors shall initially serve until the first annual meeting of stockholders following the initial effectiveness of this Section; Class II directors shall initially serve until the second annual meeting of stockholders following the initial effectiveness of this Section; and Class III directors shall initially serve until the third annual meeting of stockholders following the initial effectiveness of this Section. Commencing with the first annual meeting of stockholders following the initial effectiveness of this Section, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III, with such assignment becoming effective as of the initial effectiveness of this Section.

(b) Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by the sole remaining director. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(c) Any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66⅔% of the voting power of the stock outstanding and entitled to vote thereon.

(d) During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), and upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (ii) each Preferred Stock Director shall serve until such Preferred Stock Director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to said provisions, the terms of office of all Preferred Stock Directors elected by the holders of such Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such Preferred Stock Director shall cease to be qualified as a director and shall cease to be a director) and the total authorized number of directors of the Corporation shall be automatically reduced accordingly.

Section 5.3 Powers. Except as otherwise required by the DGCL or as provided in this Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board.

Section 5.4 Election; Notice of Nominations and Business.

(a) Ballot Not Required. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation (the "Bylaws") so provide.

(b) Notice. Advance notice of nominations for the election of directors, and of business other than nominations, to be proposed by stockholders for consideration at a meeting of stockholders of the Corporation shall be given in the manner and to the extent provided in or contemplated by the Bylaws.

(c) Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board shall fix.

ARTICLE VI STOCKHOLDER ACTION

Section 6.1 No Action Without Meeting. Except as otherwise provided for or fixed with respect to actions required or permitted to be taken solely by holders of Preferred Stock pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), no action that is required or permitted to be taken by the stockholders of the Corporation may be effected by consent of stockholders in lieu of a meeting of stockholders.

Section 6.2 Special Meetings. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called at any time only by the Board. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board.

ARTICLE VII EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE VIII BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS

The Corporation hereby expressly elects that it shall not be governed by, or otherwise subject to, Section 203 of the DGCL.

ARTICLE IX AMENDMENT

Section 9.1 Amendment of Certificate of Incorporation. The Corporation reserves the right, at any time and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and to add or insert other provisions authorized by the laws of the State of Delaware at the time in force, in the manner now or hereafter prescribed by the laws of the State of Delaware. All powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation; provided, however, that, except as otherwise provided in this Certificate of Incorporation (including any provision of a Preferred Stock Designation that provides for a greater or lesser vote) and in addition to any other vote required by law, the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required to amend or repeal, or adopt any provision inconsistent with, Section 5.2 of Article V, Article VI, Article IX or Article X.

Section 9.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, but subject to the terms of any series of Preferred Stock then outstanding, the Board is expressly authorized to adopt, amend or repeal the Bylaws. Except as otherwise provided in this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or the Bylaws, and in addition to any requirements of law, the affirmative vote of at least 66⅔% of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of the Bylaws.

ARTICLE X LIABILITY OF DIRECTORS

Section 10.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Section 10.2 Amendment or Repeal. Any amendment, repeal or elimination of this Article X, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article X, shall not affect its application with respect to an act or omission by a director occurring before such amendment, adoption, repeal or elimination.

ARTICLE XI FORUM FOR ADJUDICATION OF DISPUTES

Section 11.1 Forum. Unless the Corporation, in writing, selects or consents to the selection of an alternative forum: (a) the sole and exclusive forum for any complaint asserting any internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have, or declines to accept, jurisdiction, another state court or a federal court located within the State of Delaware); and (b) the sole and exclusive forum for any complaint asserting a cause of action arising under the Securities Act of 1933, to the fullest extent permitted by law, shall be the federal district courts of the United States of America. Notwithstanding anything herein to the contrary, and for the avoidance of doubt: (y) this Article shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934. For purposes of this Article, the term “internal corporate claims” means claims, including claims in the right of the Corporation that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity, or as to which the DGCL confers jurisdiction upon the Court of Chancery. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article.

Section 11.2 Enforceability. If any provision of this Article shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article (including, without limitation, each portion of any sentence of this Article containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable), and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 31st July 2023.

By: /s/ Joel Latham
Joel Latham
Chief Executive Officer

Amended and Restated Bylaws

of

**Incannex Healthcare Inc.
(a Delaware corporation)****ARTICLE I
CORPORATE OFFICES**

Section 1.1 Registered Office. The registered office of Incannex Healthcare Inc. (the "Corporation") shall be fixed in the Certificate of Incorporation of the Corporation.

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other place or places, either within or without the State of Delaware, as the Corporation may from time to time determine or the business of the Corporation may require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

Section 2.1 Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), a special meeting of the stockholders of the Corporation may be called at any time only by the Board of Directors. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors.

Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting), the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, if the meeting is to be held solely by means of remote communications, the means for accessing the list of stockholders contemplated by Section 2.5 of these Bylaws, shall be given. The notice shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice.

(b) Except as otherwise required by law, notice may be given in writing directed to a stockholder's mailing address as it appears on the records of the Corporation and shall be given: (i) if mailed, when notice is deposited in the U.S. mail, postage prepaid; and (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address.

(c) So long as the Corporation is subject to the Securities and Exchange Commission's proxy rules set forth in Regulation 14A under the Securities Exchange Act of 1934 (the "Exchange Act"), notice shall be given in the manner required by such rules. To the extent permitted by such rules, notice may be given by electronic transmission directed to the stockholder's electronic mail address, and if so given, shall be given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"). If notice is given by electronic mail, such notice shall comply with the applicable provisions of Sections 232(a) and 232(d) of the DGCL.

(d) Notice may be given by other forms of electronic transmission with the consent of a stockholder in the manner permitted by Section 232(b) of the DGCL and shall be deemed given as provided therein.

(e) An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be *prima facie* evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

(f) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, 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; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.4 Organization.

(a) Unless otherwise determined by the Board of Directors, meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by another person designated by the Board of Directors. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chairman, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board of Directors or by the chairman of the meeting, may include, without limitation, establishing: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the chairman of the meeting may convene and, for any or no reason, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power to declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made, pursuant to Section 2.10(c)(i) of these Bylaws, that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 2.10 of these Bylaws), and if such chairman should so declare, such nomination shall be disregarded or such other business shall not be transacted.

Section 2.5 List of Stockholders. The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 2.5 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting; or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, one-third of the voting power of the stock outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or series or classes or series is required, a majority of the voting power of the stock of such class or series or classes or series outstanding and entitled to vote on that matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the chairman of the meeting, or a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon, shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any or no reason from time to time by the chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any or no reason (and may be recessed if a quorum is not present or represented) from time to time by a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon. At any such adjourned or recessed meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting.

(a) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of such stock held of record by such holder that has voting power upon the subject matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of at least a majority of the voting power of the stock present in person or represented by proxy and entitled to vote on the subject matter, and where a separate vote by a class or series or classes or series is required, if a quorum of such class or series or classes or series is present, such act shall be authorized by the affirmative vote of at least a majority of the voting power of the stock of such class or series or classes or series present in person or represented by proxy and entitled to vote on the subject matter. Voting at meetings of stockholders need not be by written ballot.

Section 2.9 Proxies. Every stockholder entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more persons authorized to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or an executed new proxy bearing a later date.

Section 2.10 Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only: (A) pursuant to the Corporation's notice of meeting (or any supplement thereto); (B) by or at the direction of the Board of Directors (or any authorized committee thereof); or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a). For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the Corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) below) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in Section 2.10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or a public announcement of the meeting date has already been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of the beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; and (2) such person's written consent to serving as a director, if elected, for the full term for which such person is standing for election; provided, however, that, in addition to the information required in the stockholder's notice pursuant to this Section 2.10(a)(ii)(A), such person shall also provide the Corporation such other information that the Corporation may reasonably request and that is necessary to permit the Corporation to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner;

(2) the class or series and number of shares of stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting; and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "control person"):

(1) the class or series and number of shares of stock of the Corporation which are beneficially owned (as defined in Section 2.10(c)(ii) below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting;

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or control person and any other person, including, without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(3) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the Corporation's stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or control person with respect to securities of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting; and

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation with respect to the nomination or other business and, if so, the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of shares representing at least 50% of the voting power of the stock entitled to vote generally in the election of directors in the case of a nomination, or holders of at least the percentage of the Corporation's stock required to approve or adopt the business to be proposed in the case of other business.

(iii) Notwithstanding anything in Section 2.10(a)(ii) above or Section 2.10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10 shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 2.10(a), and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 2.10(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with Section 2.10(a)(ii) above, a stockholder's notice required by this Section 2.10(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting: (i) by or at the direction of the Board of Directors (or any authorized committee thereof); or (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who delivers notice thereof in writing setting forth the information required by Section 2.10(a) above. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by this Section 2.10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the Corporation. The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise required by law, each of the Chairman of the Board of Directors or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether a stockholder or beneficial owner solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii)(D)(4) of this Section 2.10). If any proposed nomination or other business is not in compliance with this Section 2.10, then except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors or the chairman of the meeting, if the stockholder does not provide the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the time frames specified herein, any such nomination shall be disregarded and any such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors or the chairman of the meeting, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business (whether pursuant to the requirements of these Bylaws or in accordance with Rule 14a-8 under the Exchange Act), such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. To be considered a qualified representative of a stockholder pursuant to the preceding sentence, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting (and in any event not fewer than five days before the meeting) stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, the “close of business” shall mean 6:00 p.m. New York time on any calendar day, whether or not the day is a business day, and a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable 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. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation (including any Preferred Stock Designation).

Section 2.11 No Action by Written Consent.

Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), no action that is required or permitted to be taken by the stockholders of the Corporation may be effected by consent of stockholders in lieu of a meeting of stockholders.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Corporation may, and shall if required by law, appoint one or more inspectors of election to act at the meeting and make a written report thereof. Inspectors may be employees of the Corporation. 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 chairman of the meeting may, and shall if required by law, appoint one or more inspectors to act at the meeting. 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. Inspectors need not be stockholders. No director or nominee for the office of director at an election shall be appointed as an inspector at such election.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity of proxies and ballots;
- (b) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;
- (c) count and tabulate all votes and ballots; and
- (d) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.14 Delivery to the Corporation. Whenever this Article II 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), the Corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

ARTICLE III DIRECTORS

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number and Election. The number of directors of the Corporation shall be fixed solely by resolution adopted from time to time by a majority of the total number of directors then authorized in office (hereinafter referred to as the "Whole Board"). The directors shall hold office in the manner provided in the Certificate of Incorporation. At any meeting of stockholders at which directors are to be elected, directors shall be elected by a plurality of the votes cast. Directors need not be stockholders unless so required by the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by the sole remaining director, and any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action. After an action is taken, the consent or consents relating thereto shall be filed with the minutes or proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.10 Chairman of the Board. The Chairman of the Board shall preside at meetings of stockholders (unless otherwise determined by the Board of Directors) and at meetings of directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors may adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.13 Emergency Bylaws. This Section 3.13 shall be operative during any emergency condition as contemplated by Section 110 of the DGCL (an "Emergency"), notwithstanding any different or conflicting provisions in these Bylaws, the Certificate of Incorporation or the DGCL. In the event of any Emergency, or other similar emergency condition, the director or directors in attendance at a meeting of the Board of Directors or a standing committee thereof shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate. Except as the Board may otherwise determine, during any Emergency, the Corporation and its directors and officers, may exercise any authority and take any action or measure contemplated by Section 110 of the DGCL.

ARTICLE IV COMMITTEES

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to 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 present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval; or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. A majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors; provided, however, that in no case shall a quorum be less than one-third of the directors then serving on the committee. Unless the Certificate of Incorporation, these Bylaws or a resolution of the Board of Directors requires a greater number, the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

ARTICLE V OFFICERS

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents, a Secretary, a Treasurer, a Controller and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly elected and qualified, or until such person's earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors or by a duly authorized officer and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 President. The President shall be the chief operating officer of the Corporation, with general responsibility for the management and control of the operations of the Corporation. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.6 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.7 Vice Presidents. Each Vice President shall have such powers and duties as shall be prescribed by his or her superior officer, the Chief Executive Officer or the President. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the President or another duly authorized officer may from time to time determine.

Section 5.7 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all monies and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the Chief Financial Officer may from time to time determine.

Section 5.8 Controller. The Controller shall have responsibility for the Corporation's accounting policies and practices. The Controller shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the Chief Financial Officer may from time to time determine.

Section 5.9 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.10 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.11 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.12 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.13 Signature Authority. Unless otherwise determined by the Board of Directors or otherwise provided by law or these Bylaws, contracts, evidences of indebtedness and other instruments or documents of the Corporation may be executed, signed or endorsed: (i) by the Chief Executive or the President; or (ii) by the Chief Financial Officer, any Vice President, Treasurer, Secretary or Controller, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions.

Section 5.14 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.15 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

ARTICLE VI
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1

(a) Right to Indemnification. Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnitee”), or by reason of anything done or not done by him or her in any such capacity, 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, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws; provided, however, that, except as otherwise required by law or provided in Section 6.3 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate.

(b) To receive indemnification under this Section 6.1Article VI, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall include documentation or information that is necessary to determine the entitlement of the indemnitee to indemnification and that is reasonably available to the indemnitee. Upon receipt by the Secretary of the Corporation of such a written request, unless indemnification is required by Section 6.3, the entitlement of the indemnitee to indemnification shall be determined by the following person or persons who shall be empowered to make such determination, as selected by the Board of Directors (except with respect to clause (v) of this Section 6.1(b)): (i) the Board of Directors by a majority vote of the directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee; (iv) the stockholders of the Corporation; or (v) in the event that a change of control (as defined below) has occurred, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Corporation not later than 60 days after receipt by the Secretary of the Corporation of a written request for indemnification. For purposes of this Section 6.1(b), a “change of control” will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors (the “incumbent board”), cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Corporation, was approved by a vote of at least a majority of the directors then comprising the incumbent board shall be considered as though such individual were a member of the incumbent board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) To receive an advancement of expenses under this Section 6.2, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall reasonably evidence the expenses incurred by the indemnitee and shall include or be accompanied by the undertaking required by Section 6.2(a). Each such advancement of expenses shall be made within 20 days after the receipt by the Secretary of the Corporation of a written request for advancement of expenses.

(c) Notwithstanding the foregoing Section 6.2(a), the Corporation shall not make or continue to make advancements of expenses to an indemnitee if a determination is reasonably made that the facts known at the time such determination is made demonstrate clearly and convincingly that the indemnitee acted in bad faith or in a manner that the indemnitee did not reasonably believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe his or her conduct was unlawful. Such determination shall be made: (i) by the Board of Directors by a majority vote of directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) by a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee.

Section 6.3 Indemnification for Successful Defense. To the extent that an indemnitee has been successful on the merits or otherwise in defense of any proceeding (or in defense of any claim, issue or matter therein), such indemnitee shall be indemnified under this Section 6.3 against expenses (including attorneys' fees) actually and reasonably incurred in connection with such defense. Indemnification under this Section 6.3 shall not be subject to satisfaction of a standard of conduct, and the Corporation may not assert the failure to satisfy a standard of conduct as a basis to deny indemnification or recover amounts advanced, including in a suit brought pursuant to Section 6.4 (notwithstanding anything to the contrary therein); provided, however, that, any indemnitee who is not a current or former director or officer (as such term is defined in the final sentence of Section 145(c)(1) of the DGCL) shall be entitled to indemnification under Section 6.1 and this Section 6.3 only if such indemnitee has satisfied the standard of conduct required for indemnification under Section 145(a) or Section 145(b) of the DGCL.

Section 6.4 Right of Indemnitee to Bring Suit. In the event that a determination is made that the indemnitee is not entitled to indemnification or if payment is not timely made following a determination of entitlement to indemnification pursuant to Section 6.1(b), if a request for indemnification under Section 6.3 is not paid in full by the Corporation within 60 days after a written request has been received by the Secretary of the Corporation, or if an advancement of expenses is not timely made under Section 6.2(b), the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the such applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.5 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, or otherwise.

Section 6.6 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.7 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.8 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.9 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.10 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.11 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest extent set forth in this Article VI.

**ARTICLE VII
CAPITAL STOCK**

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, including, without limitation, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Controller, the Secretary, or an Assistant Treasurer or Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has 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 such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Sections 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Transfers may also be made in any manner authorized by the Corporation (or its authorized transfer agent) and permitted by Section 224 of the DGCL.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjourned meeting, 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 shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders 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 shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII GENERAL MATTERS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall be as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

Section 8.5 Electronic Signatures, etc. Except as otherwise required by the Certificate of Incorporation (including as otherwise required by any Preferred Stock Designation) or these Bylaws (including, without limitation, as otherwise required by Section 2.14), any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. The terms “electronic mail,” “electronic mail address,” “electronic signature” and “electronic transmission” as used herein shall have the meanings ascribed thereto in the DGCL.

ARTICLE IX AMENDMENTS

Section 9.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. Except as otherwise provided in the Certificate of Incorporation (including the terms of any Preferred Stock Designation that provides for a greater or lesser vote) or these Bylaws, and in addition to any other vote required by law, the affirmative vote of at least 66% of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors on November 20, 2023.

Incannex Healthcare Inc.**Indemnification Agreement**

This Indemnification Agreement (this “**Agreement**”) is dated as of _____, and is between Incannex Healthcare Inc., a Delaware corporation (the “**Company**”), and _____ (“**Indemnitee**”).

RECITALS

A. Indemnitee’s service to the Company substantially benefits the Company.

B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company’s certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. Definitions.

(a) A “**Change in Control**” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party.* Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities;

(ii) *Change in Board Composition.* During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company’s board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv) whose election by the board of directors or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company’s board of directors;

(iii) *Corporate Transactions*. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

(iv) *Liquidation*. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

(v) *Other Events*. Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; *provided, however*, that "Person" shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; *provided, however*, that "Beneficial Owner" shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company's board of directors approving a sale of securities by the Company to such Person.

(b) "**Corporate Status**" describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise.

(c) "**DGCL**" means the General Corporation Law of the State of Delaware.

(d) "**Disinterested Director**" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "**Enterprise**" means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary.

(f) “**Expenses**” include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) “**Independent Counsel**” means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “**Independent Counsel**” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(h) “**Proceeding**” means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee’s part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to “**other enterprises**” shall include employee benefit plans; references to “**fines**” shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to “**servicing at the request of the Company**” shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Company**” as referred to in this Agreement.

2. **Indemnity in Third-Party Proceedings.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

3. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. To the extent permitted by applicable law, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, in defense of one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with (a) each successfully resolved claim, issue or matter and (b) any claim, issue or matter related to any such successfully resolved claim, issuer or matter. For purposes of this section, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

5. Indemnification for Expenses of a Witness. To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

6. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

(b) For purposes of Section 6(a), the meaning of the phrase “**to the fullest extent permitted by applicable law**” shall include, but not be limited to:

(i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company’s board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8. **Advances of Expenses.** The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 60 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee’s ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.

9. Procedures for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The written notification to the Company shall include, in reasonable detail, a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights.

(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company's assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee's counsel to the extent (i) the employment of counsel by Indemnitee is authorized by the Company, (ii) counsel for the Company or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense, (iv) the Company is not financially or legally able to perform its indemnification obligations or (v) the Company shall not have retained, or shall not continue to retain, such counsel to defend such Proceeding. The Company shall have the right to conduct such defense as it sees fit in its sole discretion. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company.

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate.

(e) Indemnitee shall not enter into any settlement in connection with a Proceeding (or any part thereof) without ten days prior written notice to the Company.

(f) The Company shall not settle any Proceeding (or any part thereof) without Indemnitee's prior written consent, which shall not be unreasonably withheld.

10. Procedures upon Application for Indemnification.

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and as is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. The Company shall, as soon as reasonably practicable after receipt of such a request for indemnification, advise the board of directors that Indemnitee has requested indemnification. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such failure is prejudicial.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's board of directors, by the stockholders of the Company. If it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided, however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 10(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by such person, persons or entity of any determination contrary to that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Enterprise, including financial statements, (ii) information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or its board of directors or counsel selected by any committee of the board of directors or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Enterprise or its board of directors or any committee of the board of directors. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

12. Remedies of Indemnitee.

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 60 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. **Contribution.** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

14. **Non-exclusivity.** The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

15. **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

16. **Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

17. **Subrogation.** In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

18. **Services to the Company.** Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

19. **Duration.** This Agreement shall continue until and terminate upon the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto.

20. **Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

21. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

22. **Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

23. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided, however*, that this Agreement is a supplement to and in furtherance of the Company's certificate of incorporation and bylaws and applicable law.

24. Modification and Waiver. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

25. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee's address, facsimile number or electronic mail address as shown on the signature page of this Agreement or in the Company's records, as may be updated in accordance with the provisions hereof; or

(b) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at the current address as the Company shall have furnished to Indemnitee.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent *via* a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), (ii) if sent *via* mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent *via* facsimile, upon confirmation of facsimile transfer or, if sent *via* electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day.

26. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, Cogency Global Inc. as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

28. Captions. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

(signature page follows)

The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

INCANNEX HEALTHCARE INC.

By: _____
Name: _____
Title

INDEMNITEE

[NAME] _____
Address: _____

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**INCANNEX HEALTHCARE INC.
2023 EQUITY INCENTIVE PLAN**

1. **Purpose.** The purpose of the Incannex Healthcare Inc. 2023 Equity Incentive Plan is to provide a means through which the Company and its Affiliates may attract and retain key personnel and whereby Directors, Employees, and Consultants of the Company and its Affiliates can acquire and maintain an equity interest in the Company, or be paid incentive compensation, which may be measured by reference to the value of Common Shares, thereby strengthening their commitment to the welfare of the Company and its Affiliates and aligning their interests with the Company's shareholders.

2. **Definitions.** The following definitions shall be applicable throughout the Plan:

(a) "Affiliate" means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(b) "Award" means, individually or collectively, any Incentive Stock Option, Nonqualified Stock Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Stock Bonus Award, and Performance Award granted under the Plan.

(c) "Award Agreement" means a written or electronic agreement between the Company and a Participant setting forth the terms, conditions and restrictions of the Award granted to a Participant.

(d) "Board" means the Board of Directors of the Company.

(e) "Business Combination" has the meaning given such term in the definition of "Change in Control."

(f) "Cause" means, in the case of a particular Award, unless the applicable Award Agreement or the Participant's employment or service agreement with the Company states otherwise, the Company's termination of the Participant's Service with the Company as a result of: (i) fraud, embezzlement or other willful act of material dishonesty by the Participant in connection with or relating to the Participant's Service with the Company; (ii) theft or misappropriation of property, information, or other assets by the Participant in connection with the Participant's Service with the Company which results in or could reasonably be expected to result in material loss, damage or injury to the Company, its goodwill, business or reputation; (iii) the Participant's commission, guilty plea, no contest plea or similar plea for any felony or crime involving moral turpitude; (iv) the Participant's use of alcohol or drugs while working that materially interferes with the Participant's duties to the Company or an Affiliate; (v) the Participant's breach of a Company policy and the Participant's failure to cure such condition within 30 days after receiving written notice thereof; (vi) the Participant's material breach of any material written agreement between Participant and the Company and Participant's failure to cure such breach within 30 days after receiving written notice thereof; or (vii) the Participant's repeated insubordination, or refusal (other than as a result of a Disability or physical or mental illness) to carry out or follow specific reasonable and lawful instructions, duties, or assignments given by the Board or the Participant's supervisor that are consistent with the Participant's position with the Company and the Participant's failure to cure such condition within 30 days after receiving written notice thereof. Additionally, if the basis for Cause is, in the good faith determination of the Company not reasonably subject to cure, then such 30 days' prior notice of termination for Cause shall not be required, and such termination shall be effective on the date the Company delivers notice of termination for Cause.

The determination as to whether a Participant's Continuous Service Status has been terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's Service relationship at any time, and the term "Company" will be interpreted to include any Subsidiary, Parent, Affiliate, or any successor thereto, if appropriate

(g) "Change in Control" shall, in the case of a particular Award, unless the applicable Award Agreement states otherwise or contains a different definition of "Change in Control," be deemed to occur upon:

(i) Any sale, lease, exchange, or other transfer (in one or a series of related transactions) of all or substantially all of the assets of the Company;

(ii) Any "Person" as such term is used in Section 13(d) and Section 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") becomes, directly or indirectly, the "beneficial owner" as defined in Rule 13d-3 under the Exchange Act of securities of the Company that represent more than 50% of the combined voting power of the Company's then outstanding voting securities (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this Section 2(g)(ii), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the Company principally for bona fide equity financing purposes, (B) any acquisition by the Company, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate, (D) any acquisition by any corporation pursuant to a transaction that complies with Sections 2(g)(iv)(A) and 2(g)(iv)(B), and (E) any acquisition involving beneficial ownership of less than 50% of the then-outstanding Common Shares (the "Outstanding Company Common Shares") or the Outstanding Company Voting Securities that is determined by the Board, based on review of public disclosure by the acquiring Person with respect to its passive investment intent, not to have a purpose or effect of changing or influencing the control of the Company; provided, however, that for purposes of this clause (V), any such acquisition in connection with (x) an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents or (y) any "Business Combination" (as defined below) shall be presumed to be for the purpose or with the effect of changing or influencing the control of the Company;

(iii) During any period of not more than two (2) consecutive years, individuals who constitute the Board as of the beginning of the period (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the beginning of such period, whose election or nomination for election was approved by a vote of at least two-thirds of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination) will be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board will be deemed to be an Incumbent Director;

(iv) Consummation of a merger, amalgamation or consolidation (a “Business Combination”) of the Company with any other corporation, unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock (or, for a non-corporate entity, equivalent securities) and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors (or, for a non-corporate entity, equivalent governing body), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, and (B) at least a majority of the members of the board of directors (or, for a non-corporate entity, equivalent governing body) of the entity resulting from such Business Combination were Incumbent Directors at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination;

(v) Shareholder approval of a plan of complete liquidation of the Company.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company’s incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company’s securities immediately before such transactions. In addition, if any Person (as defined above) is in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered to cause a Change in Control. If required for compliance with Code Section 409A, in no event will a Change in Control be deemed to have occurred if such transaction is not also a “change in the ownership or effective control of” the Company or “a change in the ownership of a substantial portion of the assets of” the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

(h) “Code” means the Internal Revenue Code of 1986, as amended, and any successor thereto. Reference in the Plan to any section of the Code shall be deemed to include any regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, regulations or guidance.

(i) “Committee” means a committee of at least two people as the Board may appoint to administer the Plan or, if no such committee has been appointed by the Board, the Board.

(j) “Common Shares” means shares of the Company’s common stock (and any stock or other securities into which such ordinary shares may be converted or into which they may be exchanged).

(k) “Company” means Incannex Healthcare Inc., a Delaware corporation.

(l) “Consultant” means any person, including an advisor, consultant, or agent, engaged by the Company or a Parent or Subsidiary to render services to such entity or who renders, or has rendered, services to the Company, or any Parent, Subsidiary or affiliate and is compensated for such services.

(m) “Date of Grant” means the date on which the granting of an Award is authorized, or such other date as may be specified in such authorization.

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

(o) “Disability” means, for the purpose of Incentive Stock Options, total and permanent disability as defined in Code Section 22(e)(3); and for the purpose of Awards other than Incentive Stock Options, means the inability of the Participant to perform the Participant’s material duties hereunder with a reasonable accommodation due to a physical or mental injury, infirmity or incapacity for 120 days (including weekends and holidays) in any 365 day period. The Participant shall reasonably cooperate with the Company if a question arises as to whether the Participant has become disabled (including, without limitation, submitting to reasonable examinations by one or more medical doctors and other health care specialists reasonably selected by the Company and authorizing such medical doctors and other health care specialists to discuss the Participant’s condition with the Company).

(p) “Effective Date” means the date the Plan is approved by the shareholders of the Company.

(q) “Eligible Director” means a person who is a “non-employee director” within the meaning of Rule 16b-3 under the Exchange Act.

(r) “Eligible Person” with respect to an Award denominated in Common Shares, means any (i) Employee; provided, however, that no such employee covered by a collective bargaining agreement shall be an Eligible Person unless and to the extent that such eligibility is set forth in such collective bargaining agreement which includes rules regarding equity entitlement or in an agreement or instrument relating thereto; (ii) Director of the Company or an Affiliate; (iii) Consultant to the Company or an Affiliate; provided that if the Securities Act applies such persons must be eligible to be offered securities registrable on Form S-8 under the Securities Act; or (iv) prospective employees, directors, officers, consultants or advisors who have accepted offers of employment or consultancy from the Company or its Affiliates (and would satisfy the provisions of clauses (i) through (iii) above once he or she begins employment with or begins providing Services to the Company or its Affiliates).

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

(t) “Exchange Act” has the meaning given such term in the definition of “Change in Control,” and any reference in the Plan to any section of (or rule promulgated under) the Exchange Act shall be deemed to include any rules, regulations or other interpretative guidance under such section or rule, and any amendments or successor provisions to such section, rules, regulations, or guidance.

(u) “Exchange Program” means a program under which outstanding Awards are amended to provide for a lower Exercise Price or surrendered or cancelled in exchange for (i) Awards with a lower Exercise Price, (ii) a different type of Award or awards under a different equity incentive plan, (iii) cash, or (iv) a combination of (i), (ii) and/or (iii). Notwithstanding the preceding, the term Exchange Program does not include (A) any action taken in connection with Section 13 or with a Change in Control transaction nor (B) any transfer or other disposition permitted under Section 15(a). For the purpose of clarity, each of the actions described in the prior sentence, none of which constitute an Exchange Program, may be undertaken (or authorized) by the Committee in its sole discretion without approval by the Company’s shareholders.

(v) “Exercise Price” has the meaning given such term in Section 7(b).

(w) “Fair Market Value” means, as of any date, the value of Common Shares determined as follows:

(i) If the Common Shares are listed on any established stock exchange or a national market system will be the closing sales price for such shares (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable;

(ii) If the Common Shares are regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Common Share will be the mean between the high bid and low asked prices for the Common Shares on the day of determination, as reported in *The Wall Street Journal* or such other source as the Committee deems reliable; or

(iii) In the absence of an established market for the Common Shares, the Fair Market Value will be determined in good faith by the Committee.

(x) “Immediate Family Members” shall have the meaning set forth in Section 16(b).

(y) “Incentive Stock Option” means an Option that is designated by the Committee as an incentive stock option as described in Code Section 422 and otherwise meets the requirements set forth in the Plan.

(z) “Indemnifiable Person” shall have the meaning set forth in Section 4(e).

(aa) “Mature Shares” means Common Shares owned by a Participant that are not subject to any pledge or security interest and that have been either previously acquired by the Participant on the open market or meet such other requirements, if any, as the Committee may determine are necessary in order to avoid an accounting earnings charge on account of the use of such shares to pay the Exercise Price or satisfy a tax or deduction obligation of the Participant.

(bb) “Nonqualified Stock Option” means an Option that is not designated by the Committee as an Incentive Stock Option.

(cc) “Option” means an Award granted under Section 7.

(dd) “Option Period” has the meaning given such term in Section 7(c).

(ee) “Other Cash-Based Award” shall mean a right or other interest granted to a Participant pursuant to Section 11 of the Plan other than an Other Stock-Based Award.

(ff) “Other Stock-Based Award” shall mean a right or other interest granted to a Participant, valued in whole or in part by reference to, or otherwise based on, or related to, Common Shares pursuant to Section 11 of the Plan including but not limited to (i) unrestricted Common Shares awarded as a bonus or upon the attainment of performance goals or otherwise as permitted under the Plan, and (ii) a right granted to a Participant to acquire Common Shares from the Company containing terms and conditions prescribed by the Committee.

(gg) “Outstanding Company Common Shares” has the meaning given such term in the definition of “Change in Control.”

(hh) “Outstanding Company Voting Securities” has the meaning given such term in the definition of “Change in Control.”

(ii) “Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of grant of the Award, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(jj) “Participant” means an Eligible Person who has been selected by the Committee to participate in the Plan and to receive an Award pursuant to Section 6.

(kk) “Performance Award” shall mean any Award designated by the Committee as a Performance Award pursuant to Section 11.

(ll) “Performance Criteria” shall mean the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Award under the Plan.

(mm) “Performance Formula” shall mean, for a Performance Period, the one or more formulae applied against the relevant Performance Goal to determine, with regard to the Performance Award of a particular Participant, whether all, some portion but less than all, or none of the Performance Award has been earned for the Performance Period.

(nn) “Performance Goals” shall mean, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria.

(oo) “Performance Period” shall mean the one or more periods of time, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to, and the payment of, a Performance Award.

(pp) “Permitted Transferee” shall have the meaning set forth in Section 15(a).

(qq) “Person” has the meaning given such term in the definition of “Change in Control.”

(rr) “Plan” means this Incannex Healthcare Inc. 2023 Equity Incentive Plan, as amended from time to time.

(ss) “Qualifying Termination” means, except as otherwise provided by the Committee as set forth in the Award Agreement, termination of a Participant’s employment by the Company without Cause occurring on or within the 12-month period (or such other period specified in the applicable Award Agreement) following the consummation of a Change in Control.

(tt) “Restricted Period” means the period determined by the Committee during which an Award is subject to restrictions or, as applicable, the period of time within which performance is measured for purposes of determining whether an Award has been earned.

(uu) “Restricted Stock Unit” means an unfunded and unsecured promise to deliver Common Shares, cash, other securities or other property, subject to certain performance or time-based restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous Services for a specified period of time), granted under Section 9.

(vv) “Restricted Stock” means Common Shares, subject to certain specified performance or time-based restrictions (including, without limitation, a requirement that the Participant remain continuously employed or provide continuous Services for a specified period of time), granted under Section 9.

(ww) “SAR Period” has the meaning given such term in Section 8(b).

(xx) “Securities Act” means the Securities Act of 1933, as amended, and any successor thereto. Reference in the Plan to any section of the Securities Act shall be deemed to include any rules, regulations or other interpretative guidance under such section, and any amendments or successor provisions to such section, rules, regulations or guidance.

(yy) “Service” means a Participant’s employment or Service with the Company or Subsidiary, whether in the capacity of an Employee, a Director, or a Consultant. Unless otherwise provided by the Board, a Participant’s Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders such Service or a change in the Company or Subsidiary for which the Participant renders such Service, provided that there is no interruption or termination of the Participant’s Service. Furthermore, a Participant’s Service shall not be deemed to have terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, unless otherwise provided by the Board, if any such leave taken by a Participant exceeds 90 days, then on the 91st day following the commencement of such leave the Participant’s Service shall be deemed to have terminated, unless the Participant’s right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, an unpaid leave of absence shall not be treated as Service for purposes of determining vesting under the Participant’s Award Agreement. Except as otherwise provided by the Board, in its discretion, the Participant’s Service shall be deemed to have terminated either upon an actual termination of Service or upon the business entity for which the Participant performs Service ceasing to be a Subsidiary. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant’s Service has terminated and the effective date of and reason for such termination.

(zz) “Stock Appreciation Right” or “SAR” means an Award granted under Section 8.

(aaa) “Stock Bonus Award” means an Award granted under Section 10.

(bbb) “Strike Price” means, except as otherwise provided by the Committee in the case of Substitute Awards, (i) in the case of a SAR granted in tandem with an Option, the Exercise Price of the related Option, or (ii) in the case of a SAR granted independent of an Option, the Fair Market Value on the Date of Grant.

(ccc) “Subsidiary” means, with respect to any specified Person:

(i) any corporation, association, or other business entity of which more than 50% of the total voting power of shares (without regard to the occurrence of any contingency and after giving effect to any voting agreement or shareholders’ agreement that effectively transfers voting power) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(ii) any partnership (or any comparable foreign entity (a) the sole general partner (or functional equivalent thereof) or the managing general partner of which is such Person or Subsidiary of such Person or (b) the only general partners (or functional equivalents thereof) of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

(ddd) “Substitute Award” has the meaning given such term in Section 5(e).

3. **Effective Date; Duration.** The Plan shall be effective as of the Effective Date. The expiration date of the Plan, on and after which date no Awards may be granted hereunder, shall be the tenth anniversary of the Effective Date; provided, however, that such expiration shall not affect Awards then outstanding, and the terms and conditions of the Plan shall continue to apply to such Awards.

4. **Administration.**

(a) *Administration by Committee.* The Committee shall administer the Plan. To the extent required to comply with the applicable provisions of Rule 16b-3 promulgated under the Exchange Act (if the Board is not acting as the Committee under the Plan), it is intended that each member of the Committee shall, at the time he or she takes any action with respect to an Award under the Plan, be an Eligible Director. However, the fact that a Committee member shall fail to qualify as an Eligible Director shall not invalidate any Award granted by the Committee that is otherwise validly granted under the Plan.

(b) *Committee Authority.* Subject to the provisions of the Plan and applicable law, the Committee shall have the sole and plenary authority, in addition to other express powers and authorizations conferred on the Committee by the Plan or by the Board, to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to a Participant; (iii) determine the number of Common Shares to be covered by, or with respect to which payments, rights, or other matters are to be calculated in connection with, Awards; (iv) determine the form of Award Agreement and the terms and conditions of any Award; (v) determine whether, to what extent, and under what circumstances Awards may be settled or exercised in cash, Common Shares, other securities, other Awards or other property, or canceled, forfeited, or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Common Shares, other securities, other Awards or other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant or of the Committee; (vii) interpret, administer, reconcile any inconsistency in, correct any defect in and/or supply any omission in the Plan and any instrument or agreement relating to, or Award granted under, the Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Committee shall deem appropriate for the proper administration of the Plan; (ix) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, Awards, including, but not limited to, upon a Qualifying Termination; (x) to institute and determine the terms and conditions of an Exchange Program; provided, however, that the Committee shall not implement an Exchange Program without the approval of the holders of a majority of the Shares that are present in person or by proxy and entitled to vote at any annual or special meeting of Company's shareholders; and (xi) make any other determination and take any other action that the Committee deems necessary or desirable for the administration.

(c) *Delegation of Authority.* The Committee may delegate to one or more officers of the Company or any Affiliate the authority to act on behalf of the Committee with respect to any matter, right, obligation, or election that is the responsibility of or that is allocated to the Committee herein, and that may be so delegated as a matter of law, except for grants of Awards to persons subject to Section 16 of the Exchange Act.

(d) *Conclusive and Binding.* Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award or any documents evidencing Awards granted pursuant to the Plan shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all persons or entities, including, without limitation, the Company, any Affiliate, any Participant, any holder or beneficiary of any Award, and any shareholder of the Company.

(e) Indemnification. No member of the Board, the Committee, delegate of the Committee or any employee or agent of the Company (each such person, an “Indemnifiable Person”) shall be liable for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan or any Award hereunder. Each Indemnifiable Person shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense (including attorneys’ fees) that may be imposed upon or incurred by such Indemnifiable Person in connection with or resulting from any action, suit or proceeding to which such Indemnifiable Person may be a party or in which such Indemnifiable Person may be involved by reason of any action taken or omitted to be taken under the Plan or any Award Agreement and against and from any and all amounts paid by such Indemnifiable Person with the Company’s approval, in settlement thereof, or paid by such Indemnifiable Person in satisfaction of any judgment in any such action, suit or proceeding against such Indemnifiable Person, provided that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding and once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of the Company’s choice. The foregoing right of indemnification shall not be available to an Indemnifiable Person to the extent that a final judgment or other final adjudication (in either case not subject to further appeal) binding upon such Indemnifiable Person determines that the acts or omissions of such Indemnifiable Person giving rise to the indemnification claim resulted from such Indemnifiable Person’s bad faith, fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the Company’s Articles of Incorporation or Bylaws. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such Indemnifiable Persons may be entitled under the Company’s Articles of Incorporation or Bylaws, as a matter of law, or otherwise, or any other power that the Company may have to indemnify such Indemnifiable Persons or hold them harmless.

(f) Board Authority. Notwithstanding anything to the contrary contained in the Plan, the Board may, in its sole discretion, at any time and from time to time, grant Awards and administer the Plan with respect to such Awards. In any such case, the Board shall have all the authority granted to the Committee under the Plan.

5. Grant of Awards; Shares Subject to the Plan; Limitations.

(a) Type of Awards. The Committee may, from time to time, grant Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Stock Bonus Awards and/or Performance Awards to one or more Eligible Persons.

(b) Authorized Common Shares. Subject to Section 13 of the Plan, Awards granted under the Plan shall be subject to the following limitations: (i) the Committee is authorized to deliver under the Plan an aggregate of []¹ Common Shares; (ii) in no event shall the maximum aggregate number of Common Shares that may be issued under the Plan pursuant to Incentive Stock Options exceed the aggregate number of Common Shares set forth in Section 5(b)(i) of the Plan plus, to the extent allowable under Code Section 422 and the regulations promulgated thereunder, any Common Shares that again become available for issuance pursuant to Section 5(c) of the Plan and (iii) the maximum number of Common Shares that may be granted under the Plan during any single fiscal year to any Participant who is a non-employee director, when taken together with any cash fees paid to such non-employee director during such year in respect of his or her Service as a non-employee director (including Service as a member or chair of any committee of the Board), shall not exceed \$750,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); provided that the non-employee directors who are considered independent (under the rules of The NASDAQ Stock Market or other securities exchange on which the Common Shares are traded) may make exceptions to this limit for a non-executive chair of the Board, if any, in which case the non-employee Director receiving such additional compensation may not participate in the decision to award such compensation. Notwithstanding the automatic annual increase set forth in (i) above, the Board may act prior to January 1st of a given year to provide that there will be no such increase in the share reserve for such year or that the increase in the share reserve for such year will be a lesser number of Common Shares than would otherwise occur pursuant to the stipulated percentage.

¹ To equal []% of Common Shares outstanding.

(c) Availability of Shares. In the event that (i) any Option or other Award granted hereunder is exercised through the tendering of Common Shares (either actually or by attestation) or by the withholding of Common Shares by the Company, or (ii) tax or deduction liabilities arising from such Option or other Award are satisfied by the tendering of Common Shares (either actually or by attestation) or by the withholding of Common Shares by the Company, then in each such case the Common Shares so tendered or withheld shall be added to the Common Shares available for grant under the Plan on a one-for-one basis. Common Shares underlying Awards under this Plan that are forfeited, cancelled, expire unexercised, or are settled in cash are available again for Awards under the Plan.

(d) Sources of Shares. Common Shares delivered by the Company in settlement of Awards may be authorized and unissued shares, shares held in the treasury of the Company, shares purchased on the open market or by private purchase, or a combination of the foregoing.

(e) Substitute Awards. Awards may, in the sole discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines (“Substitute Awards”). The number of Common Shares underlying any Substitute Awards shall not be counted against the aggregate number of Common Shares available for Awards under the Plan.

6. **Eligibility**. Participation shall be limited to Eligible Persons who have entered into an Award Agreement or who have received written notification from the Committee, or from a person designated by the Committee, that they have been selected to participate in the Plan.

7. **Options**

(a) Generally. Each Option shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Option so granted shall be subject to the conditions set forth in this Section 7, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. All Options granted under the Plan shall be Nonqualified Stock Options unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. Incentive Stock Options shall be granted only to Eligible Persons who are employees of the Company and its Affiliates, and no Incentive Stock Option shall be granted to any Eligible Person who is ineligible to receive an Incentive Stock Option under the Code. No Option shall be treated as an Incentive Stock Option unless the Plan has been approved by the shareholders of the Company in a manner intended to comply with the shareholder approval requirements of Code Section 422(b)(1); provided that any Option intended to be an Incentive Stock Option shall not fail to be effective solely on account of a failure to obtain such approval, but rather such Option shall be treated as a Nonqualified Stock Option unless and until such approval is obtained. In the case of an Incentive Stock Option, the terms and conditions of such grant shall be subject to and comply with such rules as may be prescribed by Code Section 422. If for any reason an Option intended to be an Incentive Stock Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such non-qualification, such Option or portion thereof shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan.

(b) Exercise Price. Except as set forth in this Section 7(b), the exercise price (“Exercise Price”) per Common Share for each Option shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant. Notwithstanding the foregoing, (i) an Option may be granted with an Exercise Price lower than the minimum Exercise Price set forth above if such Option is (A) granted pursuant to an assumption or substitution for another option in a manner qualifying under the provisions of Code Section 424(a), (B) granted in compliance with Code Section 409A or in a manner that is not subject to Code Section 409A, and (ii) in the case of an Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns shares representing more than 10% of the total combined voting power of all classes of shares of the Company or any related corporation (as determined in accordance with Treasury Regulation Section 1.422-2(f)), the Exercise Price per share shall not be less than 110% of the Fair Market Value per share on the Date of Grant.

(c) Vesting and Expiration. Options shall vest and become exercisable in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed ten years, as may be determined by the Committee (the “Option Period”); provided, however, that the Option Period shall not exceed five years from the Date of Grant in the case of an Incentive Stock Option granted to a Participant who on the Date of Grant owns shares representing more than 10% of the total combined voting power of all classes of shares of the Company or any related corporation (as determined in accordance with Treasury Regulation Section 1.422-2(f)); provided, further, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any Option, which acceleration shall not affect the terms and conditions of such Option other than with respect to exercisability. Unless otherwise provided by the Committee in an Award Agreement: (i) the unvested portion of an Option shall expire upon termination of employment or Service of the Participant granted the Option, and the vested portion of such Option shall remain exercisable for (A) one year following termination of employment or Service by reason of such Participant’s death or disability (as determined by the Committee), but not later than the expiration of the Option Period or (B) ninety (90) days following termination of employment or Service for any reason other than such Participant’s death or disability, and other than such Participant’s termination of employment or Service for Cause, but not later than the expiration of the Option Period; and (ii) both the unvested and the vested portion of an Option shall expire upon the termination of the Participant’s employment or Service by the Company for Cause. If the Option would expire at a time when the exercise of the Option would violate applicable securities laws, the expiration date applicable to the Option will be automatically extended to a date that is thirty (30) calendar days following the date such exercise would no longer violate applicable securities laws (so long as such extension shall not violate Code Section 409A); provided, that in no event shall such expiration date be extended beyond the expiration of the Option Period.

(d) Method of Exercise and Form of Payment. No Common Shares shall be delivered pursuant to any exercise of an Option until payment in full of the Exercise Price therefor is received by the Company and the Participant has paid to the Company an amount equal to any taxes required to be withheld or paid. Options that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Option accompanied by payment of the Exercise Price. The Exercise Price shall be payable (i) in cash, check, cash equivalent and/or Common Shares valued at the Fair Market Value at the time the Option is exercised (including, pursuant to procedures approved by the Committee, by means of attestation of ownership of a sufficient number of Common Shares in lieu of actual delivery of such shares to the Company); provided that such Common Shares are not subject to any pledge or other security interest and are Mature Shares and; (ii) by such other method as the Committee may permit in accordance with applicable law, in its sole discretion, on a case by case basis, including without limitation: (A) in other property having a Fair Market Value on the date of exercise equal to the Exercise Price or (B) if there is a public market for the Common Shares at such time, by means of a broker-assisted “cashless exercise” pursuant to which the Company is delivered a copy of irrevocable instructions to a stockbroker to sell the Common Shares otherwise deliverable upon the exercise of the Option and to deliver promptly to the Company an amount equal to the Exercise Price or (C) by a “net exercise” method whereby the Company withholds from the delivery of the Common Shares for which the Option was exercised that number of Common Shares having a Fair Market Value equal to the aggregate Exercise Price for the Common Shares for which the Option was exercised. No fractional Common Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional Common Shares, or whether such fractional Common Shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

(e) Notification upon Disqualifying Disposition of an Incentive Stock Option. Each Participant awarded an Incentive Stock Option shall notify the Company in writing immediately after the date said Participant makes a disqualifying disposition of any Common Shares acquired pursuant to the exercise of such Incentive Stock Option. A disqualifying disposition is any disposition (including, without limitation, any sale) of such Common Shares before the later of (A) two (2) years after the Date of Grant of the Incentive Stock Option or (B) one (1) year after the date of exercise of the Incentive Stock Option. The Company may, if determined by the Committee and in accordance with procedures established by the Committee, retain possession of any Common Shares acquired pursuant to the exercise of an Incentive Stock Option as agent for the applicable Participant until the end of the period described in the preceding sentence.

(f) Compliance with Laws, etc. Notwithstanding the foregoing, in no event shall a Participant be permitted to exercise an Option in a manner that the Committee determines would violate the Sarbanes-Oxley Act of 2002, if applicable, or any other applicable law or the applicable rules and regulations of the Securities and Exchange Commission or the applicable rules and regulations of any securities exchange or inter-dealer quotation system on which the securities of the Company are listed or traded.

8. Stock Appreciation Rights

(a) Generally. Each SAR shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each SAR so granted shall be subject to the conditions set forth in this Section 8, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement. Any Option granted under the Plan may include tandem SARs. The Committee also may award SARs to Eligible Persons independent of any Option.

(b) Strike Price. The Strike Price for each SAR shall not be less than 100% of the Fair Market Value of such share determined as of the Date of Grant. Notwithstanding the foregoing, SAR may be granted with a Strike Price lower than the minimum Strike Price set forth above if such SAR is granted in compliance with Code Section 409Ae,

(c) Vesting and Expiration. A SAR granted in connection with an Option shall become exercisable and shall expire according to the same vesting schedule and expiration provisions as the corresponding Option. A SAR granted independent of an Option shall vest and become exercisable and shall expire in such manner and on such date or dates determined by the Committee and shall expire after such period, not to exceed 10 years, as may be determined by the Committee (the "SAR Period"); provided, however, that notwithstanding any vesting dates set by the Committee, the Committee may, in its sole discretion, accelerate the exercisability of any SAR, which acceleration shall not affect the terms and conditions of such SAR other than with respect to exercisability. Unless otherwise provided by the Committee in an Award Agreement: (i) the unvested portion of a SAR shall expire upon termination of employment or Service of the Participant granted the SAR, and the vested portion of such SAR shall remain exercisable for (A) one year following termination of employment or Service by reason of such Participant's death or disability (as determined by the Committee), but not later than the expiration of the SAR Period or (B) 90 days following termination of employment or Service for any reason other than such Participant's death or disability, and other than such Participant's termination of employment or Service for Cause, but not later than the expiration of the SAR Period; and (ii) both the unvested and the vested portion of a SAR shall expire upon the termination of the Participant's employment or Service by the Company for Cause. If the SAR would expire at a time when the exercise of the SAR would violate applicable securities laws, the expiration date applicable to the SAR will be automatically extended to a date that is 30 calendar days following the date such exercise would no longer violate applicable securities laws (so long as such extension shall not violate Code Section 409A); provided, that in no event shall such expiration date be extended beyond the expiration of the SAR Period.

(d) *Method of Exercise.* SARs that have become exercisable may be exercised by delivery of written or electronic notice of exercise to the Company in accordance with the terms of the Award, specifying the number of SARs to be exercised and the date on which such SARs were awarded. Notwithstanding the foregoing, if on the last day of the Option Period (or in the case of a SAR independent of an option, the SAR Period), the Fair Market Value exceeds the Strike Price, the Participant has not exercised the SAR or the corresponding Option (if applicable), and neither the SAR nor the corresponding Option (if applicable) has expired, such SAR shall be deemed to have been exercised by the Participant on such last day and the Company shall make the appropriate payment therefor.

(e) *Payment.* Upon the exercise of a SAR, the Company shall pay to the Participant an amount equal to the number of shares subject to the SAR that are being exercised multiplied by the excess, if any, of the Fair Market Value of one Common Share on the exercise date over the Strike Price, less an amount equal to any taxes required to be withheld or paid. The Company shall pay such amount in cash, in Common Shares valued at Fair Market Value, or any combination thereof, as determined by the Committee. No fractional Common Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional Common Shares, or whether such fractional Common Shares or any rights thereto shall be canceled, terminated, or otherwise eliminated.

9. **Restricted Stock and Restricted Stock Units.**

(a) *Generally.* Each grant of Restricted Stock and Restricted Stock Units shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each such grant shall be subject to the conditions set forth in this Section 9, and to such other conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement.

(b) *Restricted Accounts: Escrow or Similar Arrangement.* Upon the grant of Restricted Stock, a book entry in a restricted account shall be established in the Participant's name at the Company's transfer agent and, if the Committee determines that the Restricted Stock shall be held by the Company or in escrow rather than held in such restricted account pending the release of the applicable restrictions, the Committee may require the Participant to additionally execute and deliver to the Company (i) an escrow agreement satisfactory to the Committee, if applicable, and (ii) the appropriate share power (endorsed in blank) with respect to the Restricted Stock covered by such agreement. If a Participant fails to execute Restricted Stock Award Agreement and, if applicable, an escrow agreement and blank share power within the amount of time specified by the Committee, the Award shall be null and void. Subject to the restrictions set forth in this Section 9 and the applicable Award Agreement, the Participant generally shall have the rights and privileges of a shareholder as to such Restricted Stock, including without limitation the right to vote such Restricted Stock and the right to receive dividends, if applicable. To the extent shares of Restricted Stock are forfeited, any share certificates issued to the Participant evidencing such shares shall be returned to the Company, and all rights of the Participant to such shares and as a shareholder with respect thereto shall terminate without further obligation on the part of the Company.

(c) Vesting; Acceleration of Lapse of Restrictions. Unless otherwise provided by the Committee in an Award Agreement the unvested portion of Restricted Stock and Restricted Stock Units shall terminate and be forfeited upon termination of employment or Service of the Participant granted the applicable Award.

(d) Delivery of Restricted Stock and Settlement of Restricted Stock Units.

(i) Upon the expiration of the Restricted Period with respect to any shares of Restricted Stock, the restrictions set forth in the applicable Award Agreement shall be of no further force or effect with respect to such shares, except as set forth in the applicable Award Agreement. If an escrow arrangement is used, upon such expiration, the Company shall deliver to the Participant, or his beneficiary, without charge, the share certificate evidencing the shares of Restricted Stock that have not then been forfeited and with respect to which the Restricted Period has expired (rounded down to the nearest full share). Dividends, if any, that may have been withheld by the Committee and attributable to any particular share of Restricted Stock shall be distributed to the Committee and attributable to any particular share of Restricted Stock shall be distributed to the Participant in cash or, at the sole discretion of the Committee, in Common Shares having a Fair Market Value equal to the amount of such dividends, upon the release of restrictions on such share and, if such share is forfeited, the Participant shall have no right to such dividends (except as otherwise set forth by the Committee in the applicable Award Agreement).

(ii) Unless otherwise provided by the Committee in an Award Agreement, upon the expiration of the Restricted Period with respect to any outstanding Restricted Stock Units, the Company shall deliver to the Participant, or his beneficiary, without charge, one Common Share for each such outstanding Restricted Stock Unit; provided, however, that the Committee may, in its sole discretion, elect to (A) pay cash or part cash and part Common Share in lieu of delivering only Common Shares in respect of such Restricted Stock Units or (B) defer the delivery of Common Shares (or cash or part Common Shares and part cash, as the case may be) beyond the expiration of the Restricted Period if such delivery would result in a violation of applicable law until such time as is no longer the case. If a cash payment is made in lieu of delivering Common Shares, the amount of such payment shall be equal to the Fair Market Value of the Common Shares as of the date on which the Restricted Period lapsed with respect to such Restricted Stock Units, less an amount equal to any taxes required to be withheld or paid.

10. Stock Bonus Awards. The Committee may issue unrestricted Common Shares, or other Awards denominated in Common Shares, under the Plan to Eligible Persons, either alone or in tandem with other awards, in such amounts as the Committee shall from time to time in its sole discretion determine. Each Stock Bonus Award granted under the Plan shall be evidenced by an Award Agreement (whether in paper or electronic medium (including email or the posting on a web site maintained by the Company or a third party under contract with the Company)). Each Stock Bonus Award so granted shall be subject to such conditions not inconsistent with the Plan as may be reflected in the applicable Award Agreement.

11. Performance Awards.

(a) Generally. The Committee shall have the authority, at the time of grant of any Award described in Sections 7 through 10 of the Plan, to designate such Award as a Performance Award. The Committee shall have the authority to make an award of a cash bonus to any Participant and designate such Award as a Performance Award. Unless otherwise determined by the Committee, an Award Agreement shall evidence all Performance Awards.

(b) *Discretion of Committee with Respect to Performance Awards.* The Committee shall have the discretion to establish the terms, conditions, and restrictions of any Performance Award. With regard to a particular Performance Period, the Committee shall have sole discretion to select the length of such Performance Period, the type(s) of Performance Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal (s), the kind(s) and/or level(s) of the Performance Goals(s) that is (are) to apply and the Performance Formula.

(c) *Performance Criteria.* The Committee may establish Performance Criteria that will be used to establish the Performance Goal(s) for Performance Awards which may be based on the attainment of specific levels of performance of the Company (and/or one or more Affiliates, divisions, business segments or operational units, or any combination of the foregoing) and may include, without limitation, any of the following: (i) net earnings or net income (before or after taxes); (ii) basic or diluted earnings per share (before or after taxes); (iii) revenue or revenue growth (measured on a net or gross basis); (iv) gross profit or gross profit growth; (v) operating profit (before or after taxes); (vi) return measures (including, but not limited to, return on assets, capital, invested capital, equity, or sales); (vii) cash flow (including, but not limited to, operating cash flow, free cash flow, net cash provided by operations and cash flow return on capital); (viii) financing and other capital raising transactions (including, but not limited to, sales of the Company's equity or debt securities); (ix) earnings before or after taxes, interest, depreciation and/or amortization; (x) gross or operating margins; (xi) productivity ratios; (xii) share price (including, but not limited to, growth measures and total shareholder return); (xiii) expense targets; (xiv) margins; (xv) productivity and operating efficiencies; (xvi) customer satisfaction; (xvii) customer growth; (xviii) working capital targets; (xix) measures of economic value added; (xx) inventory control; (xxi) enterprise value; (xxii) sales; (xxiii) debt levels and net debt; (xxiv) combined ratio; (xxv) timely launch of new facilities; (xxvi) client retention; (xxvii) employee retention; (xxviii) timely completion of rollouts of new products and services; (xxix) cost targets; (xxx) reductions and savings; (xxxi) productivity and efficiencies; (xxxii) strategic partnerships or transactions; and (xxxiii) personal targets, goals or completion of projects. Any one or more of the Performance Criteria may be used on an absolute or relative basis to measure the performance of the Company and/or one or more Affiliates as a whole or any business unit(s) of the Company and/or one or more Affiliates or any combination thereof, as the Committee may deem appropriate, or any of the above Performance Criteria may be compared to the performance of a selected group of comparison or peer companies, or a published or special index that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices. The Committee also has the authority to provide for accelerated vesting of any Award based on the achievement of Performance Goals pursuant to the Performance Criteria specified in this paragraph. Any Performance Criteria that are financial metrics, may be determined in accordance with United States Generally Accepted Accounting Principles ("GAAP") or may be adjusted when established to include or exclude any items otherwise includable or excludable under GAAP.

(d) *Modification of Performance Goal(s).* The Committee is authorized at any time to adjust or modify the calculation of a Performance Goal for such Performance Period, based on and in order to appropriately reflect any specified circumstance or event that occurs during a Performance Period, including but not limited to the following: (i) asset write-downs; (ii) litigation or claim judgments or settlements; (iii) the effect of changes in tax laws, accounting principles, or other laws or regulatory rules affecting reported results; (iv) any reorganization and restructuring programs; (v) unusual and/or infrequently occurring items as described in Accounting Principles Board Opinion No. 30 (or any successor pronouncement thereto) and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (vi) acquisitions or divestitures; (vii) discontinued operations; (viii) any other specific unusual or infrequently occurring or non-recurring events, or objectively determinable category thereof; (ix) foreign exchange gains and losses; and (x) a change in the Company's fiscal year.

(e) *Terms and Conditions for Receipt of Payment.* Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company on the last day of a Performance Period to be eligible for payment in respect of a Performance Award for such Performance Period. A Participant shall be eligible to receive payment in respect of a Performance Award only to the extent that: (i) the Performance Goals for such period are achieved; and (ii) all or some of the portion of such Participant's Performance Award has been earned for the Performance Period based on the application of the Performance Formula to such achieved Performance Goals. Following the completion of a Performance Period, the Committee shall determine whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, calculate the amount of the Performance Awards earned for the period based upon the Performance Formula. The Committee shall then determine the amount of each Participant's Performance Award actually payable for the Performance Period.

(f) *Timing of Award Payments.* Except as provided in an Award Agreement, Performance Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following the Committee's determination in accordance with Section 11(e).

12. **Other Stock-or Cash-Based Awards.** The Committee is authorized to grant Awards to Participants in the form of Other Stock-Based Awards or Other Cash-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan. To the extent necessary to satisfy the short-term deferral exception to Code Section 409A, unless the Committee shall determine otherwise, the Awards shall provide that payment shall be made within two and one-half (2½) months after the end of the year in which the Participant has a legally binding vested right to such Award. The Committee may establish such other rules applicable to the Other Stock- or Cash-Based Awards as it deems appropriate, to the extent consistent with the Plan.

13. **Changes in Capital Structure and Similar Events.** In the event of (i) any dividend (other than ordinary cash dividends) or other distribution (whether in the form of cash, Common Shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, amalgamation, consolidation, spin-off, split-up, split-off, combination, repurchase or exchange of Common Shares or other securities of the Company, issuance of warrants or other rights to acquire Common Shares or other securities of the Company, or other similar corporate transaction or event (including, without limitation, a Change in Control) that affects the Common Shares, or (ii) unusual or infrequently occurring events (including, without limitation, a Change in Control) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange or inter-dealer quotation system, accounting principles or law, such that in either case an adjustment is determined by the Committee in its sole discretion to be necessary or appropriate, then the Committee shall make any such adjustments in such manner as it may deem equitable, including without limitation any or all of the following:

(a) adjusting any or all of (i) the number of Common Shares or other securities of the Company (or number and kind of other securities or other property) that may be delivered in respect of Awards or with respect to which Awards may be granted under the Plan (including, without limitation, adjusting any or all of the limitations under Section 5 of the Plan) and (ii) the terms of any outstanding Award, including, without limitation, (A) the number of Common Shares or other securities of the Company (or number and kind of other securities or other property) subject to outstanding Awards or to which outstanding Awards relate, (B) the Exercise Price or Strike Price with respect to any Award, or (C) any applicable performance measures (including, without limitation, Performance Criteria and Performance Goals);

(b) providing for a substitution or assumption of Awards in a manner that substantially preserves the applicable terms of such Awards;

(c) accelerating the exercisability or vesting of, lapse of restrictions on, or termination of, Awards or providing for a period of time for exercise prior to the occurrence of such event;

(d) modifying the terms of Awards to add events, conditions or circumstances (including termination of employment within a specified period after a Change in Control) upon which the exercisability or vesting of or lapse of restrictions thereon will accelerate;

(e) deeming any performance measures (including, without limitation, Performance Criteria and Performance Goals) satisfied at target, maximum or actual performance through closing or such other level determined by the Committee in its sole discretion, or providing for the performance measures to continue (as is or as adjusted by the Committee) after closing;

(f) providing that for a period prior to the Change in Control determined by the Committee in its sole discretion, any Options or SARs that would not otherwise become exercisable prior to the Change in Control will be exercisable as to all Common Shares subject thereto (but any such exercise will be contingent upon and subject to the occurrence of the Change in Control and if the Change in Control does not take place after giving such notice for any reason whatsoever, the exercise will be null and void) and that any Options or SARs not exercised prior to the consummation of the Change in Control will terminate and be of no further force and effect as of the consummation of the Change in Control; and

(g) canceling any one or more outstanding Awards and causing to be paid to the holders thereof, in cash, Common Shares, other securities or other property, or any combination thereof, the value of such Awards, if any, as determined by the Committee (which if applicable may be based upon the price per Common Share received or to be received by other shareholders of the Company in such event), including without limitation, in the case of an outstanding Option or SAR, a cash payment in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the Common Shares subject to such Option or SAR over the aggregate Exercise Price or Strike Price of such Option or SAR, respectively (it being understood that, in such event, any Option or SAR having a per share Exercise Price or Strike Price equal to, or in excess of, the Fair Market Value of a Common Share subject thereto may be canceled and terminated without any payment or consideration therefor); provided, however, that in the case of any "equity restructuring" (within the meaning of the Financial Accounting Standards Board Accounting Standards Codification Topic 718), the Committee shall make an equitable or proportionate adjustment to outstanding Awards to reflect such equity restructuring. The Company shall give each Participant notice of an adjustment hereunder and, upon notice, such adjustment shall be conclusive and binding for all purposes.

14. Amendments and Termination

(a) *Amendment and Termination of the Plan*. The Board may amend, alter, suspend, discontinue, or terminate the Plan or any portion thereof at any time; provided that (i) no amendment to Section 14(b) (to the extent required by the proviso in such Section 14(b)) shall be made without shareholder approval and (ii) no such amendment, alteration, suspension, discontinuation or termination shall be made without shareholder approval if such approval is necessary to comply with any tax or regulatory requirement applicable to the Plan (including, without limitation, as necessary to comply with any rules or requirements of any securities exchange or inter-dealer quotation system on which the Common Shares may be listed or quoted); provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant, holder or beneficiary.

(b) Amendment of Award Agreements. The Committee may, to the extent consistent with the terms of any applicable Award Agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any Award theretofore granted or the associated Award Agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation, or termination that would materially and adversely affect the rights of any Participant with respect to any Award theretofore granted shall not to that extent be effective without the consent of the affected Participant; provided, further, that without shareholder approval, except as otherwise permitted under Section 13, (i) no amendment or modification may reduce the Exercise Price of any Option or the Strike Price of any SAR, (ii) the Committee may not cancel any outstanding Option or SAR where the Fair Market Value of the Common Shares underlying such Option or SAR is less than its Exercise Price and replace it with a new Option or SAR, another Award or cash and (iii) the Committee may not take any other action that is considered a “repricing” for purposes of the shareholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Common Shares are listed or quoted.

15. General.

(a) Nonsectionability.

(i) Each Award shall be exercisable only by a Participant during the Participant’s lifetime, or, if permissible under applicable law, by the Participant’s legal guardian or representative. No Award may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant other than by will or by the laws of descent and distribution and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or an Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(ii) Notwithstanding the foregoing, the Committee may, in its sole discretion, permit Awards (other than Incentive Stock Options) to be transferred by a Participant, without consideration, subject to such rules as the Committee may adopt consistent with any applicable Award Agreement to preserve the purposes of the Plan, to: (A) any person who is a “family member” of the Participant, as such term is used in the instructions to Form S-8 under the Securities Act (collectively, the “Immediate Family Members”); (B) a trust solely for the benefit of the Participant and his or her Immediate Family Members; (C) a partnership or limited liability company whose only partners or shareholders are the Participant and his or her Immediate Family Members; or (D) any other transferee as may be approved either (I) by the Board or the Committee in its sole discretion, or (II) as provided in the applicable Award Agreement (each transferee described in clauses (A), (B), (C) and (D) above is hereinafter referred to as a “Permitted Transferee”); provided that the Participant gives the Committee advance written notice describing the terms and conditions of the proposed transfer and the Committee notifies the Participant in writing that such a transfer would comply with the requirements of the Plan.

(iii) The terms of any Award transferred in accordance with the immediately preceding sentence shall apply to the Permitted Transferee and any reference in the Plan, or in any applicable Award Agreement, to a Participant shall be deemed to refer to the Permitted Transferee, except that (A) Permitted Transferees shall not be entitled to transfer any Award, other than by will or the laws of descent and distribution; (B) Permitted Transferees shall not be entitled to exercise any transferred Option unless there shall be in effect a registration statement on an appropriate form covering the Common Shares to be acquired pursuant to the exercise of such Option if the Committee determines, consistent with any applicable Award Agreement, that such a registration statement is necessary or appropriate; (C) the Committee or the Company shall not be required to provide any notice to a Permitted Transferee, whether or not such notice is or would otherwise have been required to be given to the Participant under the Plan or otherwise; and (D) the consequences of the termination of the Participant's employment by, or Services to, the Company or an Affiliate under the terms of the Plan and the applicable Award Agreement shall continue to be applied with respect to the Participant, including, without limitation, that an Option shall be exercisable by the Permitted Transferee only to the extent, and for the periods, specified in the Plan and the applicable Award Agreement.

(b) Tax Withholding and Deductions.

(i) A Participant shall be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right and is hereby authorized to deduct and withhold, from any cash, Common Shares, other securities or other property deliverable under any Award or from any compensation or other amounts owing to a Participant, the amount (in cash, Common Shares, other securities or other property) of any required taxes (up to the maximum statutory rate under applicable law as in effect from time to time as determined by the Committee) and deduction in respect of an Award, its grant, vesting or exercise, or any payment or transfer under an Award or under the Plan and to take such other action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such taxes.

(ii) Without limiting the generality of clause (i) above, the Committee may, in its sole discretion, determined on a case by case basis, permit a Participant to satisfy, in whole or in part, the foregoing tax and deduction liability by (A) the delivery of Common Shares (which are not subject to any pledge or other security interest and are Mature Shares, except as otherwise determined by the Committee) owned by the Participant having a Fair Market Value equal to such liability or (B) having the Company withhold from the number of Common Shares otherwise issuable or deliverable pursuant to the exercise or settlement of the Award a number of shares with a Fair Market Value equal to such liability.

(c) No Claim to Awards; No Rights to Continued Employment; Waiver. No person shall have any claim or right to be granted an Award under the Plan or, having been selected for the grant of an Award, to be selected for a grant of any other Award. There is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated. Neither the Plan nor any action taken hereunder shall be construed as giving any Participant any right to be retained in the employ or Service of the Company or an Affiliate, nor shall it be construed as giving any Participant any rights to continued service on the Board. The Company or any of its Affiliates may at any time dismiss a Participant from employment or discontinue any consulting relationship, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or any Award Agreement. By accepting an Award, a Participant shall thereby be deemed to have waived any claim to continued exercise or vesting of an Award or to damages or severance entitlement related to non-continuation of the Award beyond the period provided under the Plan or any Award Agreement, notwithstanding any provision to the contrary in any written employment contract or other agreement between the Company and its Affiliates and the Participant, whether any such agreement is executed before, on or after the Date of Grant.

(d) Addenda/International Participants. The Committee may adopt such addenda to the Plan as it may consider necessary or appropriate for the purpose of granting Awards, which Awards may contain such terms and conditions as the Committee deems necessary or appropriate to accommodate differences in local law, tax policy or custom, which may deviate from the terms and conditions set forth in this Plan. The terms of any such addenda shall supersede the terms of the Plan to the extent necessary to accommodate such differences but shall not otherwise affect the terms of the Plan as in effect for any other purpose. With respect to Participants who reside or work outside of the United States of America, the Committee may in its sole discretion amend the terms of the Plan or outstanding Awards with respect to such Participants in order to conform such terms with the requirements of local law or to obtain more favorable tax or other treatment for a Participant, the Company, or its Affiliates.

(e) Designation and Change of Beneficiary. Each Participant may file with the Committee a written designation of one or more persons as the beneficiary(ies) who shall be entitled to receive the amounts payable with respect to an Award, if any, due under the Plan upon his death. A Participant may, from time to time, revoke or change his beneficiary designation without the consent of any prior beneficiary by filing a new designation with the Committee. The last such designation received by the Committee shall be controlling; provided, however, that no designation, or change or revocation thereof, shall be effective unless received by the Committee prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. If no beneficiary designation is filed by a Participant, the beneficiary shall be deemed to be his or her spouse or, if the Participant is unmarried at the time of death, his or her estate.

(f) Termination of Employment/Service. Unless determined otherwise by the Committee at any point following such event: (i) neither a temporary absence from employment or Service due to illness, vacation or leave of absence nor a transfer from employment or Service with the Company to employment or Service with an Affiliate (or vice-versa) shall be considered a termination of employment or Service with the Company or an Affiliate; and (ii) if a Participant's employment with the Company and its Affiliates terminates, but such Participant continues to provide services to the Company and its Affiliates in a non-employee capacity (or vice-versa), such change in status shall not be considered a termination of employment with the Company or an Affiliate.

(g) Leaves of Absence/Transfer Between Locations. The Committee shall have the discretion to determine at any time whether and to what extent the vesting of Awards shall be suspended during any leave of absence; provided, however, that in the absence of such determination, vesting of Awards shall continue during any paid leave and during any unpaid leave (unless otherwise required by applicable Laws). A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Participant's employer or (ii) transfers between locations of the Company or between the Company or any Subsidiary. If an Employee is holding an Incentive Stock Option and such leave exceeds three (3) months then, for purposes of Incentive Stock Option status only, such Employee's Service as an Employee shall be deemed terminated on the first (1st) day following such three (3) month period and the Incentive Stock Option shall thereafter automatically be treated for tax purposes as a Nonstatutory Stock Option in accordance with applicable laws, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to a written Company policy.

(h) No Rights as a Shareholder. Except as otherwise specifically provided in the Plan or any Award Agreement, no person shall be entitled to the privileges of ownership in respect of Common Shares or other securities that are subject to Awards hereunder until such shares have been issued or delivered to that person.

(i) Government and Other Regulations.

(i) The obligation of the Company to settle Awards in Common Shares or other consideration shall be subject to all applicable laws, rules, and regulations, and to such approvals by governmental agencies as may be required. Notwithstanding any terms or conditions of any Award to the contrary, the Company shall be under no obligation to offer to sell or to sell, and shall be prohibited from offering to sell or selling, any Common Shares or other securities pursuant to an Award unless such shares have been properly registered for sale pursuant to the Securities Act with the Securities and Exchange Commission or unless the Company has received an opinion of counsel, satisfactory to the Company, that such shares may be offered or sold without such registration pursuant to an available exemption therefrom and the terms and conditions of such exemption have been fully complied with. The Company shall be under no obligation to register for sale under the Securities Act any of the Common Shares or other securities to be offered or sold under the Plan. The Committee shall have the authority to provide that all certificates for Common Shares or other securities of the Company or any Affiliate delivered under the Plan shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan, the applicable Award Agreement, the federal securities laws, or the rules, regulations and other requirements of the Securities and Exchange Commission, any securities exchange or inter-dealer quotation system upon which such shares or other securities are then listed or quoted and any other applicable federal, state, local or non-U.S. laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. Notwithstanding any provision in the Plan to the contrary, the Committee reserves the right to add any additional terms or provisions to any Award granted under the Plan that it in its sole discretion deems necessary or advisable in order that such Award complies with the legal requirements of any governmental entity to whose jurisdiction the Award is subject.

(ii) The Committee may cancel an Award or any portion thereof if it determines, in its sole discretion, that legal or contractual restrictions and/or blockage and/or other market considerations would make the Company's acquisition of Common Shares from the public markets, the Company's issuance of Common Shares or other securities to the Participant, the Participant's acquisition of Common Shares or other securities from the Company and/or the Participant's sale of Common Shares to the public markets, illegal, impracticable or inadvisable. If the Committee determines to cancel all or any portion of an Award denominated in Common Shares in accordance with the foregoing, the Company shall pay to the Participant an amount equal to the excess of (A) the aggregate Fair Market Value of the Common Shares subject to such Award or portion thereof canceled (determined as of the applicable exercise date, or the date that the shares would have been vested or delivered, as applicable), over (B) the aggregate Exercise Price or Strike Price (in the case of an Option or SAR, respectively) or any amount payable as a condition of delivery of Common Shares (in the case of any other Award). Such amount shall be delivered to the Participant as soon as practicable following the cancellation of such Award or portion thereof.

(j) Payments to Persons Other Than Participants. If the Committee shall find that any person to whom any amount is payable under the Plan is unable to care for his affairs because of illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior claim therefor has been made by a duly appointed legal representative) may, if the Committee so directs the Company, be paid to his spouse, child, relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Committee and the Company therefor.

(k) Nonexclusivity of the Plan. Neither the adoption of this Plan by the Board nor the submission of this Plan to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options or other equity-based awards otherwise than under this Plan, and such arrangements may be either applicable generally or only in specific cases.

(l) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate, on the one hand, and a Participant or other person or entity, on the other hand. No provision of the Plan or any Award shall require the Company, for the purpose of satisfying any obligations under the Plan, to purchase assets or place any assets in a trust or other entity to which contributions are made or otherwise to segregate any assets, nor shall the Company maintain separate bank accounts, books, records or other evidence of the existence of a segregated or separately maintained or administered fund for such purposes. Participants shall have no rights under the Plan other than as unsecured general creditors of the Company, except that insofar as they may have become entitled to payment of additional compensation by performance of services, they shall have the same rights as other employees under general law.

(m) Reliance on Reports. Each member of the Committee and each member of the Board shall be fully justified in acting or failing to act, as the case may be, and shall not be liable for having so acted or failed to act in good faith, in reliance upon any report made by the independent public accountant of the Company and its Affiliates and/or any other information furnished in connection with the Plan by any agent of the Company or the Committee or the Board, other than himself.

(n) Relationship to Other Benefits. No payment under the Plan shall be considered in determining any benefits under any pension, retirement, profit sharing, group insurance or other benefit plan of the Company except as otherwise specifically provided in such other plan.

(o) Governing Law. The Plan shall be governed by and construed in accordance with the internal laws of the State of Delaware applicable to contracts made and performed wholly within the State of Delaware, without giving effect to the conflict of laws provisions thereof. Each party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the state and federal courts seated in Wilmington, Delaware (and any appellate courts thereof) in any action or proceeding arising out of or relating to this Plan, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in such courts, (ii) agrees that any claim in respect of any such action or proceeding may be heard and determined in such court, (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court, and (iv) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party hereby knowingly, voluntarily, and intentionally irrevocably waives the right to a trial by jury in respect to any litigation, dispute, claim, legal action or other legal proceeding based hereon, or arising out of, under, or in connection with, this Plan.

(p) Severability. If any provision of the Plan or any Award or Award Agreement is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any person or entity or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be construed or deemed stricken as to such jurisdiction, person or entity or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(q) Obligations Binding on Successors. The obligations of the Company under the Plan shall be binding upon any successor corporation or organization resulting from the merger, amalgamation, consolidation, or other reorganization of the Company, or upon any successor corporation or organization succeeding to substantially all of the assets and business of the Company.

(r) Status under ERISA. It is the intent of the Company that the Plan shall not constitute an “employee benefit plan” for purposes of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended.

(s) Code Section 409A.

(i) Notwithstanding any provision of this Plan to the contrary, all Awards made under this Plan are intended to be exempt from or, in the alternative, comply with Code Section 409A and the interpretive guidance thereunder, including the exceptions for stock rights and short-term deferrals. The Plan shall be construed and interpreted in accordance with such intent. Each payment under an Award shall be treated as a separate payment for purpose of Code Section 409A.

(ii) If a Participant is a “specified employee” (as such term is defined for purposes of Code Section 409A) at the time of his or her termination of Service, no amount that is nonqualified deferred compensation subject to Code Section 409A and that becomes payable by reason of such termination of Service shall be paid to the Participant (or in the event of the Participant’s death, the Participant’s representative or estate) before the earlier of (x) the first business day after the date that is six months following the date of the Participant’s termination of Service, and (y) within 30 days following the date of the Participant’s death. For purposes of Code Section 409A, a termination of Service shall be deemed to occur only if it is a “separation from service” within the meaning of Code Section 409A, and references in the Plan and any Award Agreement to “termination of service” or similar terms shall mean a “separation from service.” If any Award is or becomes subject to Code Section 409A, unless the applicable Award Agreement provides otherwise, such Award shall be payable upon the Participant’s “separation from service” within the meaning of Code Section 409A. If any Award is or becomes subject to Code Section 409A and if payment of such Award would be accelerated or otherwise triggered under a Change in Control, then the definition of Change in Control shall be deemed modified, only to the extent necessary to avoid the imposition of an excise tax under Code Section 409A, to mean a “change in control event” as such term is defined for purposes of Code Section 409A.

(iii) Any adjustments made pursuant to Section 13 to Awards that are subject to Code Section 409A shall be made in compliance with the requirements of Code Section 409A, and any adjustments made pursuant to Section 13 to Awards that are not subject to Code Section 409A shall be made in such a manner as to ensure that after such adjustment, the Awards either (x) continue not to be subject to Code Section 409A or (y) comply with the requirements of Code Section 409A.

(t) Expenses; Gender; Titles and Headings. The expenses of administering the Plan shall be borne by the Company. Masculine pronouns and other words of masculine gender shall refer to both men and women. The titles and headings of the sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings shall control.

(u) Other Agreements. Notwithstanding the above, the Committee may require, as a condition to the grant of and/or the receipt of Common Shares or other securities under an Award, that the Participant execute lock-up, shareholder, or other agreements, as it may determine in its sole and absolute discretion.

(v) Erroneously Awarded Compensation. All Awards shall be subject (including on a retroactive basis) to (i) any clawback, forfeiture or similar incentive compensation recoupment policy established from time to time by the Company, including, without limitation, any such policy established to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act, (ii) applicable law (including, without limitation, Section 304 of the Sarbanes-Oxley Act and Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), and/or (iii) the rules and regulations of the applicable securities exchange or inter-dealer quotation system on which the Common Shares or other securities are listed or quoted, and such requirements shall be deemed incorporated by reference into all outstanding Award Agreements.

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

(x) Corporate Records Control. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.



Incannex Healthcare Inc.

Code of Conduct

1. Introduction

The reputation and integrity of Incannex Healthcare Inc. and its subsidiaries (collectively, the “Company”) are valuable assets that are vital to the Company’s success. Each employee of the Company, including each of the Company’s officers and Directors, is responsible for conducting the Company’s business in a manner that demonstrates a commitment to the highest standards of ethics and integrity.

The purposes of this Code of Conduct (this “Code”) are to focus Directors and employees on areas of ethical risk, provide guidance to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct and foster a culture of honesty and accountability. No code of conduct can replace the thoughtful behaviour of an ethical Director or employee. Accordingly, dishonest or unethical conduct or conduct that is illegal will constitute a violation of this Code, regardless of whether this Code specifically addresses such conduct.

All provisions of this Code which impose a standard of conduct on employees shall be equally applicable to officers of the Company without regard to whether or not such officers are employees of the Company.

2. Core values

In all the Company’s relationships, including those with the public, shareholders, customers, suppliers, regulators and business partners, each Director and employee must demonstrate a steadfast commitment to the following core values:

- integrity;
- honest and ethical conduct;
- compliance with laws, rules and regulations;
- avoidance of conflicts of interest and the appearance of such conflicts;
- full, fair, accurate and timely disclosure by the Company to the public;
- proper delegation, guidance and oversight;
- prompt internal reporting of violations of this Code; and
- accountability for complying with this Code.

3. Implementation and oversight of this Code

The Company’s Board of Directors (the “Board”) is ultimately responsible for the implementation of this Code. The Board has designated the Audit Committee (the “Committee”) to oversee the administration of this Code. In addition to overseeing the administration of this Code, the Committee will review and approve, consistent with the requirements of the Nasdaq listing rules (“Listing Rules”), related party transactions that must be disclosed in proxy statements or other filings pursuant to the Listing Rules, or the rules adopted by the Securities and Exchange Commission (“SEC”). One or more compliance officers (the “Compliance Officer”) will assist the Committee with the administration of this Code. The Chairman of the Committee will serve as the Compliance Officer for executive officers and Directors. The Corporate Secretary will be the Compliance Officer for employees and officers, other than executive officers.

Questions regarding the application or interpretation of this Code are inevitable. Directors, officers and employees should feel free to direct questions to their respective Compliance Officer.

Statements in this Code to the effect that certain actions may be taken only with the “Company’s approval” mean that the Compliance Officer or, as appropriate, the Board or the Committee must give prior written approval before the proposed action may be undertaken.

This Code should be read in conjunction with all the Company’s other policies and compliance procedures.

The Company may ask its employees or Directors to certify on a periodic basis that they are in full compliance with this Code and, in the discretion of the Compliance Officer, with related policy statements.

4. Requests for waiver of any provision of this Code

Executive Officers and employees must submit any requests for a waiver of a provision of this Code in writing to the Compliance Officer a reasonable period in advance of the proposed conduct for appropriate review. Any waiver with respect to a Director or executive officer must be approved by the Board, and, where appropriate, upon prior review and recommendation of the Committee.

In some circumstances, the Company must publicly disclose a waiver and/or amendment of this Code. In addition, if a waiver is granted, the Company may have to publicly disclose the nature of the granted waiver, including any implicit waiver, the name of the party or parties benefiting from the waiver, the date of the waiver, and any other disclosures required under the Listing Rules or SEC rules.

5. Compliance with laws and regulations

A variety of laws apply to the Company and its operations, and some carry criminal penalties. These laws include Occupational Health & Safety laws and its status as a public company.

Examples of criminal violations of the law include:

- making false or misleading disclosures in documents filed with the SEC;
- trading on inside information;
- stealing, embezzling or misapplying the Company’s funds or other assets;
- using threats, physical force or other unauthorized means to collect money; or
- making a payment for an expressed purpose on the Company’s behalf to an individual who intends to use it for a different purpose.

The Company must, and will, investigate, address and report, as appropriate, all violations, including all suspected criminal violations. It is the responsibility of each Director and employee to comply with the laws, rules, and regulations applicable to the Company and/or to him or her personally. No Director or employee may delegate that responsibility to another person or to the Company.

6. Conflicts of interest

The Company requires each of its employees and Directors to report promptly his or her outside associations and personal business, financial and other relationships and activities that may involve a conflict of interest or appearance of a conflict of interest between such employee or Director and the Company to the Compliance Officer, unless such relationship or activity was already reported, so that the Company can take steps to address such conflicts of interest. The term “outside association” includes any commercial, familial or other material affiliation, association or employment of an individual other than with the Company.

It is impractical to conceive of and set forth rules that cover all situations in which a conflict of interest may arise. The basic factor in all conflict-of-interest situations is, however, the division of loyalty or the perception of a division of loyalty, between the Company’s best interests and the interests of the employee or Director that could possibly affect, or appear to affect, the employee’s or Director’s judgment or actions relating to the Company. Guidelines with respect to some sensitive areas in which potential conflicts of interest are likely to occur are set forth below. Employees and Director should keep in mind that the following is not an exhaustive list of problem areas but rather a guide in applying the Company’s basic conflict of interest policy to any situation. The important criterion is adherence to the spirit of this Code.

Business relationships

An employee or Director may have a conflict of interest if he or she, a member of his or her family, or his or her business partner or associate owns or has a substantial direct or indirect interest in, or incurs indebtedness to, an entity with which the Company has or is seeking to have a business relationship or with which the Company competes or is seeking to compete. Investments in stock or bonds of a publicly-held company should not necessarily give rise to any conflict of interest. The question of when an investment may become so substantial as to possibly affect, or appear to affect, an individual’s judgment is largely dependent on the particular circumstances and must be addressed on a case-by-case basis.

A conflict of interest may also arise when an employee or Director, a member of his or her family or his or her business partner or associate holds a position as Director, officer, employee, advisor or partner of, or consultant, broker, finder or intermediary for, an entity with which the Company has or is seeking to have a business relationship or with which the Company competes or is seeking to compete.

The Company expects that each Director and employee will not act in a manner that could discredit the Company, unduly cause unfavourable criticism of the Company or impair public confidence in the Company’s integrity. Thus, such associations, interests and business relationships that might cause the employee or Director not to act in the best interests of the Company, or that might appear to cause divided loyalties, will be permitted only after they are first reported, reviewed and addressed in the manner prescribed by this Code, or otherwise established by the Committee.

Acceptance and giving of gifts

Any form of a gift that obligates an employee to act in a particular manner with regard to our business is a bribe and is not allowed. In some circumstances, it may be customary or appropriate to exchange gifts and entertainment with customers, potential customers, suppliers and others with whom the Company has a business relationship and it similarly may be customary and appropriate to arrange or take part in programs and events that include meals and lodging. Similarly, ordinary course business meals and entertainment are appropriate and not in violation of this code. The key is to keep an arm's length relationship and avoid excessive or lavish gifts, events or personal financial transactions that may give the appearance of undue influence. An employee should also avoid personal financial transactions with customers, suppliers and others with whom the Company has a business relationship that may influence the employee's ability to perform his or her job.

Equivalent rules apply to the giving of gifts. Obviously, gifts should not be offered as bribes. Directors and employees should also take care to avoid giving gifts that are intended to be innocent but may be construed as a bribe. Gifts and entertainment for customers, potential customers, suppliers and others with whom the Company has a business relationship must support the Company's legitimate business interests and should be reasonable and appropriate under the circumstances. Employees and Directors should be sensitive to the rules of those with whom the Company does business on receiving gifts and entertainment. Consistent with the obligation every employee has to act with integrity and honesty at all times, each employee should deal fairly with the Company's customers, suppliers, competitors and employees. Special care must be taken with gifts to government officials, stricter rules apply. An acceptable gift to the employees of a company might be perceived as a bribe to a government employee.

The prohibition on bribes applies to third parties acting on behalf of the Company, including all contractors and consultants.

Outside activities / employment

Any outside association by employees, including activities with other entities, should not encroach on the time and attention that employees are expected to devote to their duties and responsibilities to the Company, adversely affect the quality or quantity of the work product or entail the use of any of the Company's assets, including its real and personal property, or create the appearance (without the Company's approval) of the Company's sponsorship or support.

Under no circumstances is any employee or Director permitted to compete with the Company or take for himself or herself or his or her family members or their business partners or associates any business opportunity that belongs to the Company or that the employee or Director discovers or that is made available to the employee or Director by virtue of his or her position with the Company.

Civic and political activities

The Company supports the participation of its employees in civic and charitable so long as such participation does not encroach on the time and attention that the employee is expected to devote to his or her duties and responsibilities to the Company. Employees are to conduct any such activities in a manner that does not involve the Company or its assets or create an appearance of Company involvement, endorsement, sponsorship or support.

Reporting procedure for conflicts of interest and related party transactions

Each employee and Director must report promptly to the Compliance Officer or the Committee the existence of any association, interest, relationship or activity, as it arises, that actually involves or may appear to involve a conflict of interest. In addition, each employee and Director must report all related party transactions that the Company will have to disclose publicly under the Listing Rules or SEC rules because of the requirement of an independent committee of the Board to approve all such transactions. Failure to report such relationships, activities, interests and related party transactions will be a ground for disciplinary action. Where the nature of the association, interest, relationship, activity or transaction is such that an employee or Director believes that he or she is unable to disclose the details of the matter without breaching other confidences, the Compliance Officer or Committee as appropriate may, if justified, discuss with the employee or Director a resolution of the conflict consistent with all of such employee's or Director's responsibilities. The Company encourages Directors and employees to consult with the Compliance Officer as soon as possible upon learning of an association, interest, relationship, activity or transaction that could result in a conflict of interest or the appearance of a conflict of interest or could require public disclosure.

The Compliance Officer or, where appropriate, the Committee or the Board will review employee's and Director's disclosures of any conflict of interest or related party transaction and determine the appropriate manner by which the Company's approval or disapproval would be provided. Each employee or Director must cooperate fully in the review process by providing all information that the Compliance Officer, the Committee or the Board deems necessary to its review. Company actions with respect to the conflict of interest will take into account the spirit of this Code.

All associations, interests, relationships, activities or transactions disclosed by any Director or employee in accordance with this policy shall be held in confidence unless the best interests of the Company dictate otherwise, or as otherwise required by law.

Resolution of conflicts

In all cases, conflicts of interest must be handled in an ethical manner; they must be fully disclosed and considered prior to being resolved. The Compliance Officer or, where appropriate, the Committee or the Board will handle all questions of conflicts of interest.

The Compliance Officer and, as appropriate, the Committee or the Board, may determine, upon review of all relevant facts, that the conduct does not amount to a conflict of interest, or may provide guidance to avoid a conflict from developing.

An actual or potential conflict of interest may be resolved in a number of ways, including the following:

- in the case of an offer of a gift, including entertainment or meals, the appropriate resolution may be for the gift to be accepted or rejected;
- the Compliance Officer may determine the proper action alone or in consultation with the Committee or the Board;
- an employee may appeal the determination by the Compliance Officer of a conflict of interest to the Committee;
- any association, interest, relationship or participation in a transaction that is fully disclosed in writing to, and is approved in writing by, the Compliance Officer, the Committee or the Board will not be deemed to involve a conflict of interest for purposes of this Code;

- if it is concluded that a conflict of interest actually exists, the Committee or the Board may suspend the individual from some or all of an individual's duties and responsibilities or require he or she to perform other duties and responsibilities with the Company for such period of time as deemed appropriate or may request that he or she resigns from his or her position with the Company;
- in the event that the reported conflict of interest involves an outside association, the Company may permanently cease doing business with that association; or
- in the event that the reported conflict of interest involves a Director, the Director may be required to excuse himself from discussions and any decision by the Board on a matter.

7. Full, fair, accurate and timely disclosures by the Company to the public

All employees who participate, directly or indirectly, in the preparation of the financial and other disclosures that the Company makes to the public, including in its filings with the SEC or by press release, must, in addition to complying with all applicable laws, rules and regulations, follow these guidelines:

- act honestly, ethically and with integrity;
- comply with this Code;
- endeavour to ensure full, fair, timely, accurate and understandable disclosure;
- managers should, through leadership and communication, make sure that employees understand the Company's obligations to the public under the law with respect to its disclosures, including that results are never more important than compliance with the law;
- raise questions and concerns regarding the Company's public disclosures when necessary and ensure that such questions and concerns are appropriately addressed;
- provide the Company's Directors, employees, outside auditors, attorneys, consultants and advisors involved in the preparation of the Company's disclosures to the public with information that is accurate, complete, objective, relevant, timely and understandable;
- act in good faith, responsibly and with due care, competence and diligence, without misrepresenting material facts or allowing independent judgment to be subordinated by others;
- proactively promote honest and ethical behaviour among peers in our work environment;
- achieve proper and responsible use of and control over all Company assets and resources employed by or entrusted to such employees;
- record or participate in the recording of entries in the Company's books and records that are full and accurate to the best of such employee's knowledge; and
- comply with the Company's disclosure controls and procedures and system of internal controls.

8. Insider trading

If a Director or employee has material, non-public information relating to the Company or its business, it is the Company's policy that the Director or employee, or any family members or entities controlled by them may not buy or sell securities of the Company or engage in any other action to take advantage of, or pass on to others, that information. This policy also applies to trading in the securities of any other company, including our customers, suppliers, vendors or other business partners, if Directors or employees have material, non-public information about that company which the Director or employee obtained by virtue of his/her position at the Company.

Transactions that may be necessary or justifiable for independent reasons, including emergency expenditures and transactions planned before the employee learned the material information, are not exceptions. Even the appearance of an improper transaction must be avoided to prevent any potential prosecution of the Company or the individual trader.

Besides the obligation to refrain from trading while in possession of material, nonpublic information, employees are also prohibited from "tipping" others. The concept of unlawful tipping includes passing on information to friends or family members under circumstances that suggests that employees were trying to help them make a profit or avoid a loss. Besides being considered a form of insider trading, of course, tipping is also a serious breach of corporate confidentiality. For this reason, employees should be careful to avoid discussing sensitive information in any place (for instance, at lunch, on public transportation, in elevators) when others may hear such information.

9. Scientific integrity

Research integrity is fundamental to the scientific process and to the Company's ability to bring products to market. All Company research and development must be conducted according to all applicable laws and regulations and to the generally accepted ethical standards of the scientific community. Scientific misconduct, such as fabrication, falsification, or plagiarism in proposing, conducting, or reporting research, disregards the intellectual contributions and property of others, impedes the progress of research, and corrupts the scientific record. It is prohibited.

10. Fair dealing

Each Director and employee should deal fairly and in good faith with the Company's customers, suppliers, regulators, business partners and others. No Director or employee may take unfair advantage of anyone through manipulation, misrepresentation, fraud, abuse of confidential information or other similar unethical or improper conduct.

11. Delegation of authority

Each employee, and particularly each of the Company's officers, must exercise due care to ensure that any delegation of authority is reasonable and appropriate in scope, and includes appropriate guidance and continuous oversight and monitoring.

12. Handling of confidential information

Directors and employees should observe the confidentiality of information that they acquire by virtue of their positions at the Company, including information concerning the Company's customers, suppliers, business partners or associates, competitors and other employees, except where disclosure is approved by the Company or otherwise legally mandated.

13. Social media communication

Directors and employees must ensure that all communication through any social media network (including but not limited to Facebook, Twitter, LinkedIn) is controlled and strictly limited to personal matters. Under no circumstances Directors and employees should discuss Company matters or comment on the Company's activity using a social media network, whether or not the information is considered confidential.

14. Prompt internal reporting of violations of this Code

If an employee or Director violates or thinks he or she has violated any provision of this Code, or if he or she observes, learns of, or, in good faith, suspects that another person subject to this Code has violated any of its provisions, such employee or Director must report the actual or suspected violation to the Compliance Officer or the Chairman of the Committee immediately and must cooperate in any investigation of any actual or suspected violation of this Code.

If an employee or Director reports an actual or suspected violation by another in good faith, he or she will not be subject to retaliation of any kind.

15. Accountability for complying with this Code

Reported violations of this Code will be investigated, addressed promptly and treated confidentially to the extent possible. The Company strives to impose discipline for each Code violation that fits the nature and particular facts of the violation. The Company uses a system of progressive discipline. The Company will issue warnings for less significant, first-time violations. Violations of a more serious nature may result in other measures, such as suspension without pay, demotion, temporary or permanent change in duties or responsibilities, loss or reduction of bonus or option awards, or any combination of these or other such disciplinary actions, such as termination of employment.

Certain violations of this Code that go unaddressed may be treated under the Listing Rules or, where applicable, by the SEC as implicit waivers of this Code. Accordingly, a violation by a Director or executive officer that is discovered and not addressed may have to be disclosed in accordance with the listing Rules or, where applicable, under rules and regulations of the SEC or applicable listing standards. In such cases, the Company will have to disclose the nature of any violation, the date of the violation and the name of the person who committed the violation.

16. Employees of the Company dealing in the Company's securities

This area of conduct is governed by the Company's Securities Trading Policy.

Adopted: 5 October, 2023

DESCRIPTION OF CAPITAL STOCK

The following description of the capital stock of Incannex Healthcare Inc., a Delaware corporation (the “Company”) is a summary only. This summary is subject to the General Corporation Law of the State of Delaware (the “DGCL”) and the complete text of the Company’s Certificate of Incorporation and the Bylaws, each as amended and restated.

General

Under the Certificate of Incorporation, the Company is authorized to issue up to 100,000,000 shares of common stock and 10,000,000 shares of preferred stock, par value \$0.0001 per share.

Common Stock

Voting Rights. The holders of our common stock are entitled to one vote per share on all matters on which stockholders are generally entitled to vote; provided, however, that, except as otherwise required by law, holders of common stock, as such, are not entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation. Holders of our common stock do not have cumulative voting rights in the election of directors. Accordingly, the holders of a majority of the combined voting power of our common stock could, if they so choose, elect all the directors.

Dividends. Subject to the rights of the holders of any outstanding series of preferred stock, holders of common stock are entitled to receive any dividends to the extent permitted by law when, as and if declared by our board of directors.

Liquidation. Upon our dissolution, liquidation or winding up of the Company, subject to the rights of the holders of any outstanding series of preferred stock, the holders of shares of common stock are entitled to receive the assets of the Company available for distribution to its stockholders ratably in proportion to the number of shares held by them.

Other Matters. The Certificate of Incorporation does not entitle holders of our common stock to preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The common stock may be subdivided or combined in any manner unless the other class is subdivided or combined in the same proportion. All outstanding shares of our common stock are fully paid and non-assessable.

Authorized but Unissued Preferred Stock

Unless required by law or by any stock exchange on which our common stock may be listed, the authorized shares of preferred stock will be available for issuance without further action by our stockholders. Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of Nasdaq, which apply as long as our common stock is listed on Nasdaq, require stockholder approval of certain issuances equal to or exceeding 20% of the combined voting power of our common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans.

Our Certificate of Incorporation authorizes our board of directors to establish from time to time the number of shares to be included in each series of preferred stock, and to fix the designation, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each series of preferred stock. Our board of directors is also able to increase or decrease the number of authorized shares of any series of preferred stock (but not below the number of shares of that series of preferred stock then outstanding) without any further vote or action by the stockholders.

The existence of unissued and unreserved common stock or preferred stock may enable our board of directors to issue shares to persons friendly to current management, which could render more difficult or discourage an attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise, and could thereby protect the continuity of our management and possibly deprive stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

Anti-Takeover Effects of Delaware Law, the Certificate of Incorporation and the Bylaws

Certain provisions of Delaware law, the Certificate of Incorporation and the Bylaws could make the acquisition of the Company more difficult and could delay, defer or prevent a tender offer or other takeover attempt that a stockholder might consider to be in its best interest, including takeover attempts that might result in the payment of a premium to stockholders over the market price for their shares. These provisions also may promote the continuity of our management by making it more difficult for a person to remove or change the incumbent members of our board of directors.

Authorized but Unissued Shares; Undesignated Preferred Stock. The authorized but unissued shares of our common stock are available for future issuance without stockholder approval except as required by law or by any stock exchange on which our common stock may be listed. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. In addition, our board of directors may authorize, without stockholder approval, the issuance of undesignated preferred stock with voting rights or other rights or preferences designated from time to time by our board of directors. The existence of authorized but unissued shares of common stock or preferred stock may enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise.

Board Classification. The Certificate of Incorporation provides that our board of directors is divided into three classes of directors, with the classes to be as nearly equal in number as possible, and with the directors serving three-year terms. As a result, approximately one-third of our board of directors is elected each year. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board of directors. The Certificate of Incorporation and the Bylaws provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, the number of directors may be fixed from time to time exclusively pursuant to a resolution adopted by our board of directors.

No Cumulative Voting. Holders of our common stock do not have cumulative voting rights in the election of directors.

Special Meetings of Stockholders. The Certificate of Incorporation and the Bylaws provide that special meetings of our stockholders may be called only by our board of directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of our board of directors.

Stockholder Action by Written Consent. Pursuant to Section 228 of the DGCL, any action required to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of our stock entitled to vote thereon were present and voted, unless our certificate of incorporation provides otherwise. The Certificate of Incorporation precludes stockholder action by written consent.

Advance Notice Requirements for Stockholder Proposals and Nomination of Directors. The Bylaws require stockholders seeking to bring business before an annual meeting of stockholders, or to nominate individuals for election as directors at an annual or special meeting of stockholders, to provide timely notice in writing. To be timely, a stockholder's notice must be delivered to the secretary at our principal executive offices not later than the close of business on the 90th day nor earlier than the close of business on the 120th day, prior to the anniversary of the preceding year's annual meeting. However, in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, such notice will be timely only if delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the date on which a public announcement of the date of such annual meeting is first made by us. The Bylaws also specify requirements as to the form and content of a stockholder's notice. These provisions may preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our meetings of stockholders. These provisions may also discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the potential acquiror's own slate of directors or otherwise attempting to obtain control of the Company.

Removal of Directors; Vacancies. Under the DGCL, unless otherwise provided in the Certificate of Incorporation, directors serving on a classified board may be removed by the stockholders only for cause. The Certificate of Incorporation provides that directors may only be removed for cause and only by the affirmative vote of holders of at least 66 2/3% in the voting power of the stock outstanding and entitled to vote thereon. In addition, the Certificate of Incorporation also provides that any newly created directorship on our board of directors resulting from any increase in the authorized number of directors and any vacancies in our board of directors may be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by the sole remaining director (and not by the stockholders).

Supermajority Provisions. The Certificate of Incorporation and the Bylaws provide that our board of directors is expressly authorized to adopt, amend or repeal the Bylaws without a stockholder vote. Any adoption, amendment or repeal of the Bylaws by our stockholders requires the affirmative vote of the holders of at least 66 2/3% of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class.

The DGCL provides generally that the affirmative vote of a majority of the outstanding shares entitled to vote thereon, voting together as a single class, is required to amend a corporation's certificate of incorporation, unless the certificate of incorporation requires a greater percentage. The Certificate of Incorporation provides that the affirmative vote of at least 66 2/3% of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, is required to amend or repeal, or adopt any provision inconsistent with, the following provisions in the Certificate of Incorporation, among others:

- the provisions providing for a classified board of directors (the election and term of our directors);
- the provisions regarding removal of directors;
- the provisions regarding filling vacancies on our board of directors and newly created directorships;
- the provisions precluding stockholder action by written consent;
- the provisions regarding calling special meetings of stockholders;
- the provision requiring a 66 2/3% supermajority vote for stockholders to amend the Bylaws;
- the provisions eliminating monetary damages for breaches of fiduciary duty by a director; and
- the amendment provision requiring that the above provisions be amended only with a 66 2/3% supermajority vote.

Section 203 of the Delaware General Corporation Law. The Certificate of Incorporation provides that we are not governed by, or otherwise subject to, Section 203 of the DGCL.

Transfer Agent and Registrar

The transfer agent and registrar for the Company's common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is 250 Royall St., Canton, Massachusetts 02021.

Incannex Healthcare Announces Completion of its Redomiciliation to the United States

Melbourne November 29, 2023 & New York, November 28, 2023. Incannex Healthcare Inc. (NASDAQ: IXHL) is pleased to announce that its previously announced transaction to redomicile Incannex Healthcare from Australia to the United States has been implemented today, November 28, 2023 New York time (November 29, 2023 Melbourne time).

The shares of common stock of Incannex Healthcare Inc. issued today in connection with the redomiciliation are expected to commence trading on The Nasdaq Stock Market LLC (“Nasdaq”) under the symbol “IXHL” on November 30, 2023 (New York time) or as soon as possible thereafter.

Incannex Healthcare Inc. will become subject to the reporting requirements of the U.S. Securities and Exchange Commission (“SEC”) and applicable corporate governance rules of Nasdaq. Further details regarding the implementation of the redomiciliation can be found in a Current Report on Form 8-K that will be filed by Incannex Healthcare Inc. with the SEC.

About Incannex Healthcare Inc.

Incannex Healthcare Inc. (“Incannex” or the “Company”) is a clinical stage pharmaceutical development company that is developing unique medicinal cannabis pharmaceutical products and psychedelic medicine therapies for the treatment of obstructive sleep apnoea (OSA), traumatic brain injury (TBI) and concussion, lung inflammation (ARDS, COPD, asthma, bronchitis), rheumatoid arthritis, inflammatory bowel disease, anxiety disorders, addiction disorders, and pain, among other indications.

U.S. FDA approval and registration, subject to ongoing clinical success, is being pursued for each drug and therapy under development. Each indication under investigation currently has no, or limited, existing registered pharmacotherapy (drug) treatments available to the public and represent major global economic opportunities to Incannex and its shareholders.

Incannex has a strong patent filing strategy in place as it develops its products and therapies in conjunction with its medical and scientific advisory board and partners. Incannex holds 20 granted patents and over 30 pending patent applications.

A comprehensive overview of the Company can be found on Incannex’s website at www.incannex.com.au

Cautionary Statement Regarding Forward-Looking Statements

This press release contains certain forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements are identified by the use of the words “believe,” “estimate,” “expect,” “anticipate,” “intend,” “contemplate,” “foresee,” “would,” “could,” “plan,” and similar expressions that are intended to identify forward-looking statements, which are generally not historical in nature. These forward-looking statements are based on management’s current expectations and beliefs concerning future developments and their potential effect on Incannex. While management believes that these forward-looking statements are reasonable as and when made, there can be no assurance that future developments affecting Incannex will be those that are anticipated. Incannex’s forward-looking statements involve significant risks and uncertainties (some of which are beyond Incannex’s control) and assumptions that could cause actual results to differ materially from Incannex’s historical experience and present expectations or projections. You are cautioned not to place undue reliance on forward-looking statements contained in this press release, which speak only as of the date of this press release. Forward-looking statements also are affected by the risk factors described in Incannex’s Annual Report on Form 20-F for the fiscal year ended June 30, 2023, and those set forth from time-to-time in other filings with the SEC. Incannex undertakes no obligation to publicly update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise.

For more information, please contact:

Incannex Healthcare Inc.

Mr Joel Latham
Chief Executive Officer
joel@incannex.com.au

Investor Relations Contact – United States

Alyssa Factor
Edison Group
+1 (860) 573 9637
afactor@edisongroup.com