

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

HEAT BIOLOGICS, INC.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction
of incorporation or organization)*

26-2844103
*(I.R.S. Employer
Identification Number)*

**801 Capitola Drive
Durham, NC 27713
(919) 240-7133**
*(Address, including ZIP code, and telephone number, including
area code, of registrant's principal executive office)*

HEAT BIOLOGICS, INC. 2018 STOCK INCENTIVE PLAN
(Full title of the Plan)

**Jeffrey Wolf
Chief Executive Officer and
Chairman of the Board of Directors
Heat Biologics, Inc.
801 Capitola Drive
Durham, NC 27713
(919) 240-7133**
(Name, address and telephone number of agent of services)

WITH COPIES TO:

**Leslie Marlow, Esq.
Hank Gracin, Esq
Patrick J. Egan, Esq.
Gracin & Marlow, LLP
The Chrysler Building
405 Lexington Avenue, 26th Floor
New York, New York 10174
(212) 907-6457**
(Name, address and telephone number)

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

Large accelerated filer ☐
Non-accelerated filer ☐

Accelerated filer ☐
Smaller reporting company ☒
Emerging growth company ☒

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

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)(2)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)(4)	Amount of Registration Fee(5)
Common Stock, par value \$0.0002 per share, under the 2018 Stock Incentive Plan	4,000,000 shares	\$2.66	\$10,640,000	\$1,289.57

- (1) The securities to be registered include options and other rights to acquire the common stock of Heat Biologics, Inc. (the "Registrant").
- (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.
- (3) Calculated pursuant to Rule 457(c) and 457(h) of the Securities Act solely for purposes of calculating the registration fee. The price for the shares under the plan is based upon the average of the high and low sale prices of the Registrant's common stock reported on the NASDAQ Capital Market on October 2, 2018.
- (4) This registration statement also covers the common stock purchase rights issuable in accordance with the rights agreement, dated as of March 11, 2018, between the Registrant and Continental Stock Transfer & Trust Company, as Rights Agent, which are presently attached to and trade with the Registrant's common stock.
- (5) Calculated under Section 6(b) of the Securities Act as .00012120 of the proposed maximum aggregate offering price.

EXPLANATORY NOTE

Heat Biologics, Inc. (the “Registrant” or the “Company”) hereby files this Registration Statement on Form S-8 relating to its common stock, par value \$0.0002 per share (the “Common Stock”), which have been reserved for issuance and are issuable pursuant to the Company’s 2018 Stock Incentive Plan (hereinafter referred to as the “Plan”).

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

*The information specified in Item 1 and Item 2 of Part I of this Registration Statement on Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the “Securities Act”), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the Plan as required by Rule 428. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.



PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Securities and Exchange Commission (the “SEC”) allows us to “incorporate by reference” the information we file with it which means that we can disclose important information to you by referring you to those documents instead of having to repeat the information in this prospectus. The information incorporated by reference is considered to be part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), between the date of this prospectus and the termination of the offering:

- Our Annual Report on Form 10-K for the year ended December 31, 2017 (File No. 001-35994) filed with the SEC on March 2, 2018;
- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 (File No. 001-35994) filed with the SEC on May 15, 2018;
- Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 (File No. 001-35994) filed with the SEC on August 14, 2018;
- Our Current Reports on Form 8-K (File No. 001-35994) filed with the SEC on January 10, 2018, January 19, 2018, January 19, 2018, February 7, 2018, February 20, 2018, February 28, 2018, March 6, 2018, March 12, 2018, March 19, 2018, March 26, 2018, April 20, 2018, May 7, 2018, May 15, 2018, July 20, 2018, August 14, 2018 and October 2, 2018;
- The description of our common stock set forth in our registration statement on Form 8-A, filed with the SEC on July 8, 2013 (File No. 001-35994); and
- The description of our common stock purchase rights set forth in our registration statement on Form 8-A, filed with the SEC on March 12, 2018 (File No. 001-35994).

All reports and other documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act shall be deemed to be incorporated by reference in this Registration Statement and to be a part of this Registration Statement from the respective date of filing of each of those reports or documents until the filing of a post-effective amendment to this Registration Statement which indicates either that all securities offered by this Registration Statement have been sold or which deregisters all of the securities under this Registration Statement then remaining unsold.

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

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation’s board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act.

Our amended and restated certificate of incorporation provides for indemnification of our directors and executive officers to the maximum extent permitted by the Delaware General Corporation Law, and our amended and restated bylaws provide for indemnification of our directors and executive officers to the maximum extent permitted by the Delaware General Corporation Law.



As permitted by the Delaware General Corporation Law, the Registrant has entered into indemnity agreements with each of its directors that require the Registrant to indemnify such persons against any and all costs and expenses (including attorneys', witness or other professional fees) actually and reasonably incurred by such persons in connection with any action, suit or proceeding (including derivative actions), whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer or is or was acting or serving as an officer, director, employee or agent of the Registrant or any of its affiliated enterprises, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the Registrant's best interests and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit No.	Description of Document
3.1	Third Amended and Restated Certificate of Incorporation (1)
3.2	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation (2)
3.3	Amended and Restated Bylaws (3)
3.4	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation (4)
3.5	Certificate of Amendment to the Third Amended and Restated Certificate of Incorporation (5)
4.1	Heat Biologics, Inc. 2018 Stock Incentive Plan (6)
4.2	Form of Incentive Stock Option Agreement and Notice of Exercise (6)
4.3	Form of Non-Statutory Stock Option Agreement and Notice of Exercise (6)
4.4	Form of Notice of Award of Restricted Stock Units and Restricted Stock Unit Award Agreement (6)
4.5	Form of Restricted Stock Agreement (6)
5.1	Opinion of Gracin & Marlow, LLP regarding Legality of Shares (6)
23.1	Consent of BDO USA, LLP, Independent Registered Public Accounting Firm (6)
23.2	Consent of Gracin & Marlow, LLP (contained in Exhibit 5.1) (6)
24.1	Power of Attorney (included as part of the signature page to this Registration Statement and incorporated herein by reference) (6)

- (1) Incorporated by reference to the Registrant's Form S-1 filed with the Securities and Exchange Commission on May 6, 2013 (File No. 001-35994).
(2) Incorporated by reference to the Registrant's Form S-1 filed with the Securities and Exchange Commission on May 30, 2013 (File No. 001-35994).
(3) Incorporated by reference to the Registrant's Form 8-K with the Securities and Exchange Commission on July 20, 2018 (File No. 001-35994).
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(5) Incorporated by reference to the Registrant's Form 8-K filed with the Securities and Exchange Commission on July 17, 2017 (File No. 001-35994).
(6) Filed herewith.

Item 9. Undertakings

The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

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

ii. To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

iii. To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in the registration statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

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

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

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

5. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Durham, North Carolina, on the 4th day of October, 2018.

HEAT BIOLOGICS, INC.

By: /s/ Jeffrey Wolf
Name: Jeffrey Wolf
Title: Chief Executive Officer and
Chairman of the Board
(Principal Executive Officer)

POWER OF ATTORNEY AND SIGNATURES

Each of the undersigned, whose signature appears below, hereby constitutes and appoints Jeffrey Wolf as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments to this Registration Statement, whether pre-effective or post-effective, and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent, or his substitute, full power and authority to do and perform each and every act and thing necessary or appropriate to be done with respect to this Registration Statement or any amendments hereto in the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Jeffrey Wolf</u> Jeffrey Wolf	Chief Executive Officer, President and Chairman (Principal Executive Officer)	October 4, 2018
<u>/s/ Ann Rosar</u> Ann Rosar	Vice President of Finance (Principal Financial Officer and Principal Accounting Officer)	October 4, 2018
<u>/s/ John Monahan</u> John Monahan, Ph.D.	Director	October 4, 2018
<u>/s/ John Prendergast</u> John Prendergast, Ph.D.	Director	October 4, 2018
<u>/s/ Edward B. Smith, III</u> Edward B. Smith, III	Director	October 4, 2018

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HEAT BIOLOGICS, INC.

2018 STOCK INCENTIVE PLAN

1. Establishment and Purpose.

The purpose of the Heat Biologics, Inc. 2018 Stock Incentive Plan (the “Plan”) is to promote the interests of Heat Biologics, Inc. (the “Company”) and the stockholders of the Company by providing directors, officers, employees and consultants of the Company with appropriate incentives and rewards to encourage them to enter into and continue in the employ or service of the Company, to acquire a proprietary interest in the long-term success of the Company and to reward the performance of individuals in fulfilling long-term corporate objectives.

2. Administration of the Plan.

The Plan shall be administered by a Committee appointed by the Board of Directors. The Committee shall have the authority, in its sole discretion, subject to and not inconsistent with the express terms and provisions of the Plan, to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including, without limitation, the authority to grant Awards; to determine the persons to whom and the time or times at which Awards shall be granted; to determine the type and number of Awards to be granted (including whether an Option granted is an Incentive Stock Option or a Nonqualified Stock Option); to determine the number of shares of stock to which an Award may relate and the terms, conditions, restrictions and performance criteria, if any, relating to any Award; to determine whether, to what extent, and under what circumstances an Award may be settled, cancelled, forfeited, exchanged or surrendered; to make adjustments in the performance goals that may be required for any award in recognition of unusual or nonrecurring events affecting the Company or the financial statements of the Company, or in response to changes in applicable laws, regulations, or accounting principles; to construe and interpret the Plan and any Award; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of Agreements; and to make all other determinations deemed necessary or advisable for the administration of the Plan.

The Committee may, in its absolute discretion, without amendment to the Plan, (a) accelerate the date on which any Option granted under the Plan becomes exercisable, waive or amend the operation of Plan provisions respecting exercise after termination of employment or otherwise adjust any of the terms of such Option, and (b) accelerate the vesting date, or waive any condition imposed hereunder, with respect to any share of Restricted Stock, or other Award or otherwise adjust any of the terms applicable to any such Award. Notwithstanding the foregoing, and subject to Sections 4(c) and 4(d), neither the Board of Directors, the Committee nor their respective delegates shall have the authority to re-price (or cancel and/or re-grant) any Option, Stock Appreciation Right or, if applicable, other Award at a lower exercise, base or purchase price without first obtaining the approval of the Company’s stockholders.

Except as required by Rule 16b-3 with respect to grants of Awards to individuals who are subject to Section 16 of the Exchange Act, or as otherwise required for compliance with Rule 16b-3 or other applicable law, the Committee may delegate all or any part of its authority under the Plan to an employee, employees or committee of employees.

Subject to Section 16 of the Exchange Act, to the extent the Committee deems it necessary, appropriate or desirable to comply with foreign law or practices and to further the purpose of the Plan, the Committee may, without amending this Plan, establish special rules applicable to Awards granted to Participants who are foreign nationals, are employed outside the United States, or both, including rules that differ from those set forth in the Plan, and grant Awards to such Participants in accordance with those rules.

All decisions, determinations and interpretations of the Committee or the Board of Directors shall be final and binding on all persons with any interest in an Award, including the Company and the Participant (or any person claiming any rights under the Plan from or through any Participant). No member of the Committee or the Board of

Directors shall be liable for any action taken or determination made in good faith with respect to the Plan or any Award.

3. Definitions. For purposes of the Plan, the following terms shall be defined as set forth below.

(a) "Agreement" shall mean the written agreement between the Company and a Participant evidencing an Award.

(b) "Annual Incentive Award" shall mean an Award described in Section 6(g) hereof that is based upon a period of one year or less.

(c) "Award" shall mean any Option, Restricted Stock, Restricted Stock Units, Stock Bonus award, Stock Appreciation Right, Performance Award, Other Stock-Based Award or Other Cash-Based Award granted pursuant to the terms of the Plan.

(d) "Board of Directors" shall mean the Board of Directors of the Company.

(e) "Cause" shall mean a termination of a Participant's employment by the Company or any of its Subsidiaries due to (i) the continued failure, after written notice, by such Participant substantially to perform his or her duties with the Company or any of its Subsidiaries (other than any such failure resulting from incapacity due to reasonably documented physical illness or injury or mental illness), (ii) the engagement by such Participant in serious misconduct that causes, or in the good faith judgment of the Board of Directors may cause, harm (financial or otherwise) to the Company or any of its Subsidiaries including, without limitation, the disclosure of material secret or confidential information of the Company or any of its Subsidiaries or (iii) the material breach by the Participant of any agreement between such Participant, on the one hand, and the Company, on the other hand. Notwithstanding the above, with respect to any Participant who is a party to an employment agreement with the Company, Cause shall have the meaning set forth in such employment agreement.

(f) A "Change in Control" shall be deemed to have occurred if the event set forth in any one of the following paragraphs shall have occurred:

(i) any Person is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company) representing 30% or more of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (A) of paragraph (iii) below; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the Effective Date, constitute the Board of Directors and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board of Directors or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a two-thirds of the directors then still in office who either were directors on the Effective Date or whose appointment, election or nomination for election was previously so approved or recommended; or

(iii) there is consummated a merger or consolidation of the Company with any other corporation other than (A) 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 or any parent thereof) at least 50% of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a re-capitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company) representing 30% or more of the combined voting power of the Company's then outstanding securities; or

(iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at least 75% of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

(g) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder. References in the Plan to specific sections of the Code shall be deemed to include any successor provisions thereto.

(h) "Committee" shall mean, at the discretion of the Board of Directors, a Committee of the Board of Directors, which shall consist of two or more persons, each of whom, unless otherwise determined by the Board of Directors, is a "nonemployee director" within the meaning of Rule 16b-3.

(i) "Company" shall mean Heat Biologics, Inc., a Delaware corporation, and, where appropriate, each of its Subsidiaries.

(j) "Company Stock" shall mean the common stock of the Company, par value \$0.0002 per share.

(k) "Disability" shall mean permanent disability as determined pursuant to the Company's long-term disability plan or policy, in effect at the time of such disability.

(l) "Effective Date" shall mean May 10, 2018, the date on which this Plan was adopted by the Board of Directors.

(m) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

(n) The "Fair Market Value" of a share of Company Stock, as of a date of determination, shall mean (1) the closing sales price per share of Company Stock on the national securities exchange on which such stock is principally traded on the date of the grant of such Award, or (2) if the shares of Company Stock are not listed or admitted to trading on any such exchange, the closing price as reported by the Nasdaq Stock Market for the last preceding date on which there was a sale of such stock on such exchange, or (3) if the shares of Company Stock are not then listed on a national securities exchange or traded in an over-the-counter market or the value of such shares is not otherwise determinable, such value as determined by the Committee in good faith upon the advice of a qualified valuation expert. In no event shall the fair market value of any share of Company Stock, the Option exercise price of any Option, the appreciation base per share of Company Stock under any Stock Appreciation Right, or the amount payable per share of Company Stock under any other Award, be less than the par value per share of Company Stock.

(o) "Incentive Stock Option" shall mean an Option that is an "incentive stock option" within the meaning of Section 422 of the Code, or any successor provision, and that is designated by the Committee as an Incentive Stock Option.

(p) "Long Term Incentive Award" shall mean an Award described in Section 6(g) hereof that is based upon a period in excess of one year.

(q) "Nonemployee Director" shall mean a member of the Board of Directors who is not an employee of the Company.

(r) "Nonqualified Stock Option" shall mean an Option other than an Incentive Stock Option.

(s) "Option" shall mean an option to purchase shares of Company Stock granted pursuant to Section 6(b).

(t) "Other Cash-Based Award" shall mean a right or other interest granted to a Participant pursuant to Section 6(g) hereof other than an Other Stock-Based Award.

(u) "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, Company Stock pursuant to Section 6(g) hereof, including but not limited to (i) unrestricted Company Stock 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 Company Stock from the Company containing terms and conditions prescribed by the Committee.

(v) "Participant" shall mean an employee, consultant or director of the Company to whom an Award is granted pursuant to the Plan, and, upon the death of the employee, consultant or director, his or her successors, heirs, executors and administrators, as the case may be.

(w) "Performance Award" shall mean an Award granted to a Participant pursuant to Section 6(f) hereof.

(x) "Person" shall have the meaning set forth in Section 3(a)(9) of the Exchange Act, except that such term shall not include (1) the Company, (2) a trustee or other fiduciary holding securities under an employee benefit plan of the Company, (3) an underwriter temporarily holding securities pursuant to an offering of such securities, or (4) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(y) "Restricted Stock" shall mean a share of Company Stock which is granted pursuant to the terms of Section 6(e) hereof.

(z) "Restricted Stock Unit" shall mean a restricted stock unit of the Company that is granted pursuant to the terms of Section 6(g) hereof.

(aa) "Retirement" shall mean, in the case of employees, the termination of employment with the Company (other than for Cause) during or after the calendar year in which a Participant has or will reach (i) age 55 with ten years of service with the Company, or (ii) age 60 with five years of service with the Company. "Retirement" shall mean, in the case of directors, the termination of service with the Company (other than for Cause) during or after the calendar year in which a Participant has or will reach age 75 with five years of service with the Company.

(bb) "Rule 16b-3" shall mean the Rule 16b-3 promulgated under the Exchange Act, as amended from time to time.

(cc) "Securities Act" shall mean the Securities Act of 1933, as amended from time to time.

(dd) "Stock Appreciation Right" shall mean the right, granted to a Participant under Section 6(d), to be paid an amount measured by the appreciation in the Fair Market Value of a share of Company Stock from the date of grant to the date of exercise of the right, with payment to be made in cash and/or a share of Company Stock, as specified in the Award or determined by the Committee.

(ee) "Stock Bonus" shall mean a bonus payable in shares of Company Stock granted pursuant to Section 6(e) hereof.

(ff) "Subsidiary" shall mean a "subsidiary corporation" within the meaning of Section 424(f) of the Code.

4. Stock Subject to the Plan.

(a) Shares Available for Awards. The maximum aggregate number of shares of Company Stock reserved for issuance under the Plan (all of which may be granted as Incentive Stock Options) shall be Four Million (4,000,000) shares. Shares reserved under the Plan may be authorized but unissued Company Stock or authorized and issued Company Stock held in the Company's treasury. The Committee may direct that any stock certificate evidencing shares issued pursuant to the Plan shall bear a legend setting forth such restrictions on transferability as may apply to such shares pursuant to the Plan.

(b) Adjustment for Change in Capitalization. In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Company Stock, or other property), recapitalization, Company Stock split, reverse Company Stock split, reorganization, merger, consolidation, spin-off, combination, repurchase, or share exchange, or other similar corporate transaction or event has occurred, then the Committee shall make such equitable changes or adjustments as it deems necessary or appropriate to any or all of (1) the number and kind of shares of Company Stock which may thereafter be issued in connection with Awards, (2) the number and kind of shares of Company Stock, securities or other property (including cash) issued or issuable in respect of outstanding Awards, (3) the exercise price, grant price or purchase price relating to any Award, and (4) the maximum number of shares subject to Awards which may be awarded to any employee during any tax year of the Company; provided that, with respect to Incentive Stock Options, any such adjustment shall be made in accordance with Section 424 of the Code; and provided further that, no such adjustment shall cause any Award hereunder which is or could be subject to Section 409A of the Code to fail to comply with the requirements of such section.

(c) Reuse of Shares. Except as set forth below, if any shares subject to an Award are forfeited, cancelled, exchanged or surrendered, or if an Award terminates or expires without a distribution of shares to the Participant, the shares of stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, withholding, termination or expiration, again be available for Awards under the Plan. Notwithstanding the foregoing, upon the exercise of any Award granted in tandem with any other Awards, such related Awards shall be cancelled to the extent of the number of shares of Company Stock as to which the Award is exercised and such number of shares shall no longer be available for Awards under the Plan. In addition, notwithstanding the foregoing, the shares of stock surrendered or withheld as payment of either the exercise price of an Option (including shares of stock otherwise underlying an Award of a Stock Appreciation Right that are retained by the Company to account for the appreciation base of such Stock Appreciation Right) and/or withholding taxes in respect of an Award shall no longer be available for Awards under the Plan.

5. Eligibility.

The persons who shall be eligible to receive Awards pursuant to the Plan shall be the individuals the Committee shall select from time to time, who are employees (including officers of the Company and its Subsidiaries, whether or not they are directors of the Company or its Subsidiaries), Nonemployee Directors, and consultants of the Company and its Subsidiaries; provided, that Incentive Stock Options shall be granted only to employees (including officers and directors who are also employees) of the Company or its Subsidiaries.

6. Awards Under the Plan

(a) Agreement. The Committee may grant Awards in such amounts and with such terms and conditions as the Committee shall determine in its sole discretion, subject to the terms and provisions of the Plan. Each Award granted under the Plan (except an unconditional Stock Bonus) shall be evidenced by an Agreement as the Committee may in its sole discretion deem necessary or desirable and unless the Committee determines otherwise, such Agreement must be signed, acknowledged and returned by the Participant to the Company. Unless the Committee determines otherwise, any failure by the Participant to sign and return the Agreement within such period of time following the granting of the Award as the Committee shall prescribe shall cause such Award to the Participant to be null and void. By accepting an Award or other benefits under the Plan (including participation in the Plan), each Participant, shall be conclusively deemed to have indicated acceptance and ratification of, and consent to, all provisions of the Plan and the Agreement.

(b) Stock Options.

(i) Grant of Stock Options. The Committee may grant Options under the Plan to purchase shares of Company Stock in such amounts and subject to such terms and conditions as the Committee shall from time to time determine in its sole discretion, subject to the terms and provisions of the Plan. The exercise price of the share purchasable under an Option shall be determined by the Committee, but in no event shall the exercise price be less than the Fair Market Value per share on the grant date of such Option. The date as of which the Committee adopts a resolution granting an Option shall be considered the day on which such Option is granted unless such resolution specifies a later date.

(ii) Identification. Each Option shall be clearly identified in the applicable Agreement as either an Incentive Stock Option or a Nonqualified Stock Option and shall state the number of shares of Company Stock to which the Option (and/or each type of Option) relates.

(c) Special Requirements for Incentive Stock Options.

(i) To the extent that the aggregate Fair Market Value of shares of Company Stock with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year under the Plan and any other stock option plan of the Company shall exceed \$100,000, such Options shall be treated as Nonqualified Stock Options. Such Fair Market Value shall be determined as of the date on which each such Incentive Stock Option is granted.

(ii) No Incentive Stock Option may be granted to an individual if, at the time of the proposed grant, such individual owns (or is deemed to own under the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company unless (A) the exercise price of such Incentive Stock Option is at least 110% of the Fair Market Value of a share of Company Stock at the time such Incentive Stock Option is granted and (B) such Incentive Stock Option is not exercisable after the expiration of five years from the date such Incentive Stock Option is granted.

(d) Stock Appreciation Rights.

(i) The Committee may grant a related Stock Appreciation Right in connection with all or any part of an Option granted under the Plan, either at the time such Option is granted or at any time thereafter prior to the exercise, termination or cancellation of such Option, and subject to such terms and conditions as the Committee shall from time to time determine in its sole discretion, consistent with the terms and provisions of the Plan, provided, however, that in no event shall the appreciation base of the shares of Company Stock subject to the Stock Appreciation Right be less than the Fair Market Value per share on the grant date of such Stock Appreciation Right. The holder of a related Stock Appreciation Right shall, subject to the terms and conditions of the Plan and the applicable Agreement, have the right by exercise thereof to surrender to the Company for cancellation all or a portion of such related Stock Appreciation Right, but only to the extent that the related Option is then exercisable, and to be paid therefor an amount equal to the excess (if any) of (i) the aggregate Fair Market Value of the shares of Company Stock subject to the related Stock Appreciation Right or portion thereof surrendered (determined as of the exercise date), over (ii) the aggregate appreciation base of the shares of Company Stock subject to the Stock Appreciation Right or portion thereof surrendered. Upon any exercise of a related Stock Appreciation Right or any portion thereof, the number of shares of Company Stock subject to the related Option shall be reduced by the number of shares of Company Stock in respect of which such Stock Appreciation Right shall have been exercised.

(ii) The Committee may grant unrelated Stock Appreciation Rights in such amount and subject to such terms and conditions, as the Committee shall from time to time determine in its sole discretion, subject to the terms and provisions of the Plan, provided, however, that in no event shall the appreciation base of the shares of Company Stock subject to the Stock Appreciation Right be less than the Fair Market Value per share on the grant date of such Stock Appreciation Right. The holder of an unrelated Stock Appreciation Right shall, subject to the terms and conditions of the Plan and the applicable Agreement, have the right to surrender to the Company for cancellation all or a portion of such Stock Appreciation Right, but only to the extent that such Stock Appreciation Right is then exercisable, and to be paid therefor an amount equal to the excess (if any) of (x) the aggregate Fair Market Value of the shares of Company Stock subject to the Stock Appreciation Right or portion thereof surrendered (determined as of the exercise date), over (y) the aggregate appreciation base of the shares of Company Stock subject to the Stock Appreciation Right or portion thereof surrendered.

(iii) The grant or exercisability of any Stock Appreciation Right shall be subject to such conditions as the Committee, in its sole discretion, shall determine.

(c) Restricted Stock and Stock Bonus.

(i) The Committee may grant Restricted Stock awards, alone or in tandem with other Awards under the Plan, subject to such restrictions, terms and conditions, as the Committee shall determine in its sole discretion and as shall be evidenced by the applicable Agreements. The vesting of a Restricted Stock award granted under the Plan may be conditioned upon the completion of a specified period of employment or service with the Company or any Subsidiary, upon the attainment of specified performance goals, and/or upon such other criteria as the Committee may determine in its sole discretion.

(ii) Each Agreement with respect to a Restricted Stock award shall set forth the amount (if any) to be paid by the Participant with respect to such Award and when and under what circumstances such payment is required to be made.

(iii) The Committee may, upon such terms and conditions as the Committee determines in its sole discretion, provide that a certificate or certificates representing the shares underlying a Restricted Stock award shall be registered in the Participant's name and bear an appropriate legend specifying that such shares are not transferable and are subject to the provisions of the Plan and the restrictions, terms and conditions set forth in the applicable Agreement, or that such certificate or certificates shall be held in escrow by the Company on behalf of the Participant until such shares become vested or are forfeited. Except as provided in the applicable Agreement, no shares underlying a Restricted Stock award may be assigned, transferred, or otherwise encumbered or disposed of by the Participant until such shares have vested in accordance with the terms of such Award.

(iv) If and to the extent that the applicable Agreement may so provide, a Participant shall have the right to vote and receive dividends on the shares underlying a Restricted Stock award granted under the Plan. Unless otherwise provided in the applicable Agreement, any stock received as a dividend on or in connection with a stock split of the shares underlying a Restricted Stock award shall be subject to the same restrictions as the shares underlying such Restricted Stock award.

(v) The Committee may grant Stock Bonus awards, alone or in tandem with other Awards under the Plan, subject to such terms and conditions as the Committee shall determine in its sole discretion and as may be evidenced by the applicable Agreement.

(f) Performance Awards.

(i) The Committee may grant Performance Awards, alone or in tandem with other Awards under the Plan, to acquire shares of Company Stock in such amounts and subject to such terms and conditions as the Committee shall from time to time in its sole discretion determine, subject to the terms of the Plan. To the extent necessary to satisfy the short-term deferral exception to Section 409A of the Code, unless the Committee shall determine otherwise, the Performance Awards shall provide that payment shall be made within 2 1/2 months after the end of the year in which the Participant has a legally binding vested right to such award.

(g) Other Stock-Based Award; Cash-Based Award; Restricted Stock Units.

(i) Other Stock-Based Awards; 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 Section 409A of the Code, unless the Committee shall determine otherwise, the awards shall provide that payment shall be made within 2½ months after the end of the year in which the Participant has a legally binding vested right to such award. The maximum value of the aggregate payment that any Participant may receive with respect to any such Other Cash-Based Award and Other Stock Based Awards is \$6,000,000.

(ii) Grant of Restricted Stock Units. A restricted stock unit ("Restricted Stock Unit") represents the right to receive from the Company on the respective scheduled vesting or payment date for such Restricted Stock Unit, one share of Common Stock. An Award of a Restricted Stock Unit may be subject to the attainment of specified performance goals or targets, forfeitability provisions and such other terms and conditions as the Committee may determine, subject to the provisions of this Plan. At the time an Award of Restricted Stock Units is made, the Committee shall establish a period of time during which the restricted stock units shall vest and the timing

for settlement of the Restricted Stock Unit, which shall be set forth in the applicable Restricted Stock Unit award agreement.

(iii) Dividend Equivalent Accounts–Restricted Stock Units. Subject to the terms and conditions of this Plan and the applicable Restricted Stock Unit award agreement, as well as any procedures established by the Committee, prior to the expiration of the applicable vesting period of an Restricted Stock Unit, the Committee may determine to pay dividend equivalent rights with respect to Restricted Stock Units, in which case, the Company shall establish an account for the participant and reflect in that account any securities, cash or other property comprising any dividend or property distribution with respect to the shares of Common Stock underlying each Restricted Stock Unit. Each amount or other property credited to any such account shall be subject to the same vesting conditions as the Restricted Stock Unit to which it relates. The participant shall have the right to be paid the amounts or other property credited to such account upon vesting of the subject Restricted Stock Unit.

(iv) Rights as a Stockholder–Restricted Stock Units. Subject to the restrictions imposed under the terms and conditions of this Plan and the applicable Restricted Stock Unit award agreement, each participant receiving Restricted Stock Units shall have no rights as a stockholder with respect to such Restricted Stock Units until such time as shares of Common Stock are issued to the participant. No shares of Common Stock shall be issued at the time a Restricted Stock Unit is granted, and the Company will not be required to set aside a fund for the payment of any such award. Except as otherwise provided in the applicable award agreement, shares of Common Stock issuable under an Restricted Stock Unit shall be treated as issued on the first date that the holder of the Restricted Stock Unit is no longer subject to a substantial risk of forfeiture as determined for purposes of Section 409A of the Code, and the holder shall be the owner of such shares of Common Stock on such date. An award agreement may provide that issuance of shares of Common Stock under an Restricted Stock Unit may be deferred beyond the first date that the Restricted Stock Unit is no longer subject to a substantial risk of forfeiture, provided that such deferral is structured in a manner that is intended to comply with the requirements of Section 409A of the Code.

(h) Exercisability of Awards; Cancellation of Awards in Certain Cases.

(i) Except as hereinafter provided, each Agreement with respect to an Option or Stock Appreciation Right shall set forth the period during which and the conditions subject to which the Option or Stock Appreciation Right evidenced thereby shall be exercisable, and each Agreement with respect to a Restricted Stock award, Stock Bonus award, Performance Award or other Award shall set forth the period after which and the conditions subject to which amounts underlying such Award shall vest or be deliverable, all such periods and conditions to be determined by the Committee in its sole discretion.

(ii) Except as provided in Section 7(d) hereof, no Option or Stock Appreciation Right may be exercised and no shares of Company Stock underlying any other Award under the Plan may vest or become deliverable more than ten years after the date of grant (the “Stated Expiration Date”).

(iii) Except as provided in Section 7 hereof, no Option or Stock Appreciation Right may be exercised and no shares of Common Stock underlying any other Award under the Plan may vest or become deliverable unless the Participant is at such time in the employ (for Participants who are employees) or service (for Participants who are Nonemployee Directors or consultants) of the Company or a Subsidiary (or a company, or a parent or subsidiary company of such company, issuing or assuming the relevant right or award in a Change in Control) and has remained continuously so employed or in service since the relevant date of grant of the Award.

(iv) An Option or Stock Appreciation Right shall be exercisable by the filing of a written notice of exercise or a notice of exercise in such other manner with the Company, on such form and in such manner as the Committee shall in its sole discretion prescribe, and by payment in accordance with Section 6(i) hereof.

(v) Unless the applicable Agreement provides otherwise, the “Option exercise date” and the “Stock Appreciation Right exercise date” shall be the date that the written notice of exercise, together with payment, are received by the Company.

(i) Payment of Award Price.

(i) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion otherwise determines, any written notice of exercise of an Option or Stock Appreciation Right must be accompanied by payment of the full Option or Stock Appreciation Right exercise price.

(ii) Payment of the Option exercise price and of any other payment required by the Agreement to be made pursuant to any other Award shall be made in any combination of the following: (a) by certified or official bank check payable to the Company (or the equivalent thereof acceptable to the Committee), (b) with the consent of the Committee in its sole discretion, by personal check (subject to collection) which may in the Committee's discretion be deemed conditional, (c) unless otherwise provided in the applicable Agreement, and as permitted by the Committee, by delivery of previously-acquired shares of Common Stock owned by the Participant having a Fair Market Value (determined as of the Option exercise date, in the case of Options, or other relevant payment date as determined by the Committee, in the case of other Awards) equal to the portion of the exercise price being paid thereby; and/or (d) unless otherwise provided in applicable agreement, and as permitted by the Committee, on a net-settlement basis with the Company withholding the amount of Common Stock sufficient to cover the exercise price and tax withholding obligation. Payment in accordance with clause (a) of this Section 6(i)(ii) may be deemed to be satisfied, if and to the extent that the applicable Agreement so provides or the Committee permits, by delivery to the Company of an assignment of a sufficient amount of the proceeds from the sale of Company Stock to be acquired pursuant to the Award to pay for all of the Company Stock to be acquired pursuant to the Award and an authorization to the broker or selling agent to pay that amount to the Company and to effect such sale at the time of exercise or other delivery of shares of Company Stock.

7. Termination of Employment.

(a) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, upon termination of a Participant's employment or service with the Company and its Subsidiaries by the Company or its Subsidiary for Cause (or in the case of a Nonemployee Director upon such Nonemployee Director's failure to be renominated as Nonemployee Director of the Company), the portions of outstanding Options and Stock Appreciation Rights granted to such Participant that are exercisable as of the date of such termination of employment or service shall remain exercisable, and any payment or notice provided for under the terms of any other outstanding Award as respects the portion thereof that is vested as of the date of such termination of employment or service, may be given, for a period of thirty (30) days from and including the date of termination of employment or service (and shall thereafter terminate). All portions of outstanding Options or Stock Appreciation Rights granted to such Participant which are not exercisable as of the date of such termination of employment or service, and any other outstanding Award which is not vested as of the date of such termination of employment or service shall terminate upon the date of such termination of employment or service.

(b) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, upon termination of the Participant's employment or service with the Company and its Subsidiaries for any reason other than as described in subsection (a), (c), (d) or (e) hereof, the portions of outstanding Options and Stock Appreciation Rights granted to such Participant that are exercisable as of the date of such termination of employment or service shall remain exercisable for a period of ninety (90) days (and shall terminate thereafter), and any payment or notice provided for under the terms of any other outstanding Award as respects the portion thereof vested as of the date of termination of employment or service may be given, for a period of ninety (90) days from and including the date of termination of employment or service (and shall terminate thereafter). All additional portions of outstanding Options or Stock Appreciation Rights granted to such Participant which are not exercisable as of the date of such termination of employment or service, and any other outstanding Award which is not vested as of the date of such termination of employment or service shall terminate upon the date of such termination of employment or service.

(c) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, if the Participant voluntarily Retires with the consent of the Company or the Participant's employment or service terminates due to Disability, all outstanding Options, Stock Appreciation Rights and all other outstanding Awards granted to such Participant shall continue to vest in accordance with the terms of the applicable Agreements. The Participant shall be entitled to exercise each such Option or Stock Appreciation Right and to make any payment,

give any notice or to satisfy other condition under each such other Award, in each case, for a period of one year from and including the later of (i) date such entire Award becomes vested or exercisable in accordance with the terms of such Award and (ii) the date of Retirement, and thereafter such Awards or parts thereof shall be canceled. Notwithstanding the foregoing, the Committee may in its sole discretion provide for a longer or shorter period for exercise of an Option or Stock Appreciation Right or may permit a Participant to continue vesting under an Option, Stock Appreciation Right or Restricted Stock award or to make any payment, give any notice or to satisfy other condition under any other Award. The Committee may in its sole discretion, and in accordance with Section 409A of the Code, determine (i) for purposes of the Plan, whether any termination of employment or service is a voluntary Retirement with the Company's consent or is due to Disability for purposes of the Plan, (ii) whether any leave of absence (including any short-term or long-term Disability or medical leave) constitutes a termination of employment or service, or a failure to have remained continuously employed or in service, for purposes of the Plan (regardless of whether such leave or status would constitute such a termination or failure for purposes of employment law), (iii) the applicable date of any such termination of employment or service, and (iv) the impact, if any, of any of the foregoing on Awards under the Plan.

(d) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, if the Participant's employment or service terminates by reason of death, or if the Participant's employment or service terminates under circumstances providing for continued rights under subsection (b), (c) or (e) of this Section 7 and during the period of continued rights described in subsection (b), (c) or (e) the Participant dies, all outstanding Options, Restricted Stock and Stock Appreciation Rights granted to such Participant shall vest and become fully exercisable, and any payment or notice provided for under the terms of any other outstanding Award may be immediately paid or given and any condition may be satisfied, by the person to whom such rights have passed under the Participant's will (or if applicable, pursuant to the laws of descent and distribution) for a period of one year from and including the date of the Participant's death and thereafter all such Awards or parts thereof shall be canceled.

(e) Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, upon termination of a Participant's employment or service with the Company and its Subsidiaries (i) by the Company or its Subsidiaries without Cause (including, in case of a Nonemployee Director, the failure to be elected as a Nonemployee Director) or (ii) by the Participant for "good reason" or any like term as defined under any employment agreement with the Company or a Subsidiary to which a Participant may be a party to, the portions of outstanding Options and Stock Appreciation Rights granted to such Participant which are exercisable as of the date of termination of employment or service of such Participant shall remain exercisable, and any payment or notice provided for under the terms of any other outstanding Award as respects the portion thereof vested as of the date of termination of employment or service may be given, for a period of one year from and including the date of termination of employment or service and shall terminate thereafter. Unless the applicable Agreement provides otherwise or the Committee in its sole discretion determines otherwise, any other outstanding Award shall terminate as of the date of such termination of employment or service.

(f) Notwithstanding anything in this Section 7 to the contrary, no Option or Stock Appreciation Right may be exercised and no shares of Company Stock underlying any other Award under the Plan may vest or become deliverable past the Stated Expiration Date.

8. Effect of Change in Control.

Unless otherwise determined in an Award Agreement, in the event of a Change in Control:

(a) With respect to each outstanding Award that is assumed or substituted in connection with a Change in Control, in the event of a termination of a Participant's employment or service by the Company without Cause during the 24-month period following such Change in Control, on the date of such termination (i) such Award shall become fully vested and, if applicable, exercisable, (ii) the restrictions, payment conditions, and forfeiture conditions applicable to any such Award granted shall lapse, and (iii) any performance conditions imposed with respect to Awards shall be deemed to be fully achieved at target levels.

(b) With respect to each outstanding Award that is not assumed or substituted in connection with a Change in Control, immediately upon the occurrence of the Change in Control, (i) such Award shall become fully vested

and, if applicable, exercisable, (ii) the restrictions, payment conditions, and forfeiture conditions applicable to any such Award granted shall lapse, and (iii) any performance conditions imposed with respect to Awards shall be deemed to be fully achieved at target levels.

(c) For purposes of this Section 8, an Award shall be considered assumed or substituted for if, following the Change in Control, the Award remains subject to the same terms and conditions that were applicable to the Award immediately prior to the Change in Control except that, if the Award related to Shares, the Award instead confers the right to receive Common Stock of the acquiring entity.

(d) Notwithstanding any other provision of the Plan: (i) in the event of a Change in Control, except as would otherwise result in adverse tax consequences under Section 409A of the Code, the Board may, in its sole discretion, provide that each Award shall, immediately upon the occurrence of a Change in Control, be cancelled in exchange for a payment in cash or securities in an amount equal to (x) the excess of the consideration paid per Share in the Change in Control over the exercise or purchase price (if any) per Share subject to the Award multiplied by (y) the number of Shares granted under the Award and (ii) with respect to any Award that constitutes a deferral of compensation subject to Section 409A of the Code, in the event of a Change in Control that does not constitute a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company under Section 409A(a)(2)(A)(v) of the Code and regulations thereunder, such Award shall be settled in accordance with its original terms or at such earlier time as permitted by Section 409A of the Code.

9. Miscellaneous.

(a) Agreements evidencing Awards under the Plan shall contain such other terms and conditions, not inconsistent with the Plan, as the Committee may determine in its sole discretion, including penalties for the commission of competitive acts or other actions detrimental to the Company. Notwithstanding any other provision hereof, the Committee shall have the right at any time to deny or delay a Participant's exercise of Options if such Participant is reasonably believed by the Committee (i) to be engaged in material conduct adversely affecting the Company or (ii) to be contemplating such conduct, unless and until the Committee shall have received reasonable assurance that the Participant is not engaged in, and is not contemplating, such material conduct adverse to the interests of the Company.

(b) Participants are and at all times shall remain subject to the trading window policies adopted by the Company from time to time throughout the period of time during which they may exercise Options, Stock Appreciation Rights or sell shares of Company Stock acquired pursuant to the Plan.

10. No Special Employment Rights, No Right to Award

(a) Nothing contained in the Plan or any Agreement shall confer upon any Participant any right with respect to the continuation of employment or service by the Company or interfere in any way with the right of the Company, subject to the terms of any separate employment agreement to the contrary, at any time to terminate such employment or service or to increase or decrease the compensation of the Participant.

(b) No person shall have any claim or right to receive an Award hereunder. The Committee's granting of an Award to a Participant at any time shall neither require the Committee to grant any other Award to such Participant or other person at any time or preclude the Committee from making subsequent grants to such Participant or any other person.

11. Securities Matters.

(a) The Company shall be under no obligation to effect the registration pursuant to the Securities Act of any interests in the Plan or any shares of Company Stock to be issued hereunder or to effect similar compliance under any state laws. Notwithstanding anything herein to the contrary, the Company shall not be obligated to cause to be issued or delivered any certificates evidencing shares of Company Stock pursuant to the Plan unless and until the Company is advised by its counsel that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authority and the requirements of any securities exchange on which shares of Company Stock are traded. The Committee may require, as a condition of the issuance and delivery of certificates evidencing shares of Company Stock pursuant to the terms hereof, that the recipient of such shares make

such agreements and representations, and that such certificates bear such legends, as the Committee, in its sole discretion, deems necessary or desirable.

(b) The transfer of any shares of Company Stock hereunder shall be effective only at such time as counsel to the Company shall have determined that the issuance and delivery of such shares is in compliance with all applicable laws, regulations of governmental authority and the requirements of any securities exchange on which shares of Company Stock are traded. The Committee may, in its sole discretion, defer the effectiveness of any transfer of shares of Company Stock hereunder in order to allow the issuance of such shares to be made pursuant to registration or an exemption from registration or other methods for compliance available under federal or state securities laws. The Committee shall inform the Participant in writing of its decision to defer the effectiveness of a transfer. During the period of such deferral in connection with the exercise of an Award, the Participant may, by written notice, withdraw such exercise and obtain the refund of any amount paid with respect thereto.

12. Withholding Taxes.

(a) Whenever cash is to be paid pursuant to an Award, the Company shall have the right to deduct therefrom an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto.

(b) Whenever shares of Company Stock are to be delivered pursuant to an Award, the Company shall have the right to require the Participant to remit to the Company in cash an amount sufficient to satisfy any federal, state and local withholding tax requirements related thereto. With the approval of the Committee, a Participant may satisfy the foregoing requirement by electing to have the Company withhold from delivery shares of Company Stock having a value equal to the minimum amount of tax required to be withheld. Such shares shall be valued at their Fair Market Value on the date of which the amount of tax to be withheld is determined. Fractional share amounts shall be settled in cash. Such a withholding election may be made with respect to all or any portion of the shares to be delivered pursuant to an Award.

13. Non-Competition and Confidentiality.

By accepting Awards and as a condition to the exercise of Awards and the enjoyment of any benefits of the Plan, including participation therein, each Participant agrees to be bound by and subject to non-competition, confidentiality and invention ownership agreements acceptable to the Committee or any officer or director to whom the Committee elects to delegate such authority.

14. Notification of Election Under Section 83(b) of the Code

If any Participant shall, in connection with the acquisition of shares of Company Stock under the Plan, make the election permitted under Section 83(b) of the Code, such Participant shall notify the Company of such election within 10 days of filing notice of the election with the Internal Revenue Service.

15. Amendment or Termination of the Plan

The Board of Directors or the Committee may, at any time, suspend or terminate the Plan or revise or amend it in any respect whatsoever; provided, however, that the requisite stockholder approval shall be required if and to the extent the Board of Directors or Committee determines that such approval is appropriate or necessary for purposes of satisfying any section of the Code or Rule 16b-3 or other applicable law. Awards may be granted under the Plan prior to the receipt of such stockholder approval of the Plan but each such grant shall be subject in its entirety to such approval and no Award may be exercised, vested or otherwise satisfied prior to the receipt of such approval. No amendment or termination of the Plan may, without the consent of a Participant, adversely affect the Participant's rights under any outstanding Award.

16. Transfers Upon Death; Nonassignability.

(a) A Participant may file with the Committee a written designation of a beneficiary on such form as may be prescribed by the Committee and may, from time to time, amend or revoke such designation. If no designated beneficiary survives the Participant, upon the death of a Participant, outstanding Awards granted to such Participant may be exercised only by the executor or administrator of the Participant's estate or by a person who shall have

acquired the right to such exercise by will or by the laws of descent and distribution. No transfer of an Award by will or the laws of descent and distribution shall be effective to bind the Company unless the Committee shall have been furnished with written notice thereof and with a copy of the will and/or such evidence as the Committee may deem necessary to establish the validity of the transfer and an agreement by the transferee to comply with all the terms and conditions of the Award that are or would have been applicable to the Participant and to be bound by the acknowledgments made by the Participant in connection with the grant of the Award.

(b) During a Participant's lifetime, the Committee may, in its discretion, pursuant to the provisions set forth in this clause (b), permit the transfer, assignment or other encumbrance of an outstanding Option unless such Option is an Incentive Stock Option and the Committee and the Participant intends that it shall retain such status. Subject to the approval of the Committee and to any conditions that the Committee may prescribe, a Participant may, upon providing written notice to the General Counsel of the Company, elect to transfer any or all Options granted to such Participant pursuant to the Plan to members of his or her immediate family, including, but not limited to, children, grandchildren and spouse or to trusts for the benefit of such immediate family members or to partnerships in which such family members are the only partners; provided, however, that no such transfer by any Participant may be made in exchange for consideration. Any such transferee must agree, in writing, to be bound by all provisions of the Plan.

17. Effective Date and Term of Plan.

The Plan shall become effective on the Effective Date, but the Plan shall be subject to the requisite approval of the stockholders of the Company at the Company's next annual meeting of its shareholders. In the absence of such approval, such Awards shall be null and void. Unless earlier terminated by the Board of Directors, the right to grant Awards under the Plan shall terminate on the tenth anniversary of the Effective Date, which is May 10, 2018. Awards outstanding at Plan termination shall remain in effect according to their terms and the provisions of the Plan.

18. Applicable Law.

Except to the extent preempted by any applicable federal law, the Plan shall be construed and administered in accordance with the laws of the State of Delaware, without reference to its principles of conflicts of law.

19. Participant Rights.

(a) No Participant shall have any claim to be granted any award under the Plan, and there is no obligation for uniformity of treatment for Participants. Except as provided specifically herein, a Participant or a transferee of an Award shall have no rights as a stockholder with respect to any shares covered by any award until the date of the issuance of a Company Stock certificate to him or her for such shares.

(b) Determinations by the Committee under the Plan relating to the form, amount and terms and conditions of grants and Awards need not be uniform, and may be made selectively among persons who receive or are eligible to receive grants and awards under the Plan, whether or not such persons are similarly situated.

20. Unfunded Status of Awards.

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Agreement shall give any such Participant any rights that are greater than those of a general creditor of the Company.

21. No Fractional Shares.

No fractional shares of Company Stock shall be issued or delivered pursuant to the Plan. The Committee shall determine whether cash, other Awards, or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

22. Interpretation.

The Plan is designed and intended to the extent applicable, to comply with the Code, and to provide for grants and other transactions which are exempt under Rule 16b-3, and all provisions hereof shall be construed in a manner to so comply. Awards under the Plan are intended to comply with Code Section 409A to the extent subject thereto and the Plan and all Awards shall be interpreted in accordance with Code Section 409A and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date of the Plan. Notwithstanding any provision in the Plan to the contrary, no payment or distribution under this Plan that constitutes an item of deferred compensation under Code Section 409A and becomes payable by reason of a Participant's termination of employment or service with the Company will be made to such Participant until such Participant's termination of employment or service constitutes a "separation from service" (as defined in Code Section 409A). For purposes of this Plan, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for purposes of Code Section 409A. If a participant is a "specified employee" (as defined in Code Section 409A), then to the extent necessary to avoid the imposition of taxes under Code Section 409A, such Participant shall not be entitled to any payments upon a termination of his or her employment or service until the earlier of: (i) the expiration of the six (6)-month period measured from the date of such Participant's "separation from service" or (ii) the date of such Participant's death. Upon the expiration of the applicable waiting period set forth in the preceding sentence, all payments and benefits deferred pursuant to this Section 22 (whether they would have otherwise been payable in a single lump sum or in installments in the absence of such deferral) shall be paid to such Participant in a lump sum as soon as practicable, but in no event later than sixty (60) calendar days, following such expired period, and any remaining payments due under this Plan will be paid in accordance with the normal payment dates specified for them herein.

This Plan was approved and adopted by the Board of Directors on the 10th day of May, 2018.

FORM OF
HEAT BIOLOGICS, INC.
INCENTIVE STOCK OPTION AGREEMENT

Granted under 2018 Stock Incentive Plan

1. Grant of Option. This Incentive Stock Option Agreement (the “**Agreement**”) evidences the grant by Heat Biologics, Inc., a Delaware corporation (the “**Company**”), on the Grant Date to the Participant, an employee of the Company, of an option (this “**Option**”) to purchase, in whole or in part, on the terms provided herein and in the Company’s 2018 Stock Incentive Plan (the “**Plan**”), the Total Number of Shares Covered by this Option (the “**Total Number of Shares**”) at the Exercise Price per Share, all as defined and set forth in the accompanying Notice of Incentive Stock Option (the “**Notice**”). Capitalized terms that are not otherwise defined herein or in the Notice shall have the meanings given to such terms in the Plan.

It is intended that this Option shall be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the “**Code**”). If for any reason the Option, or any portion thereof, does not meet the requirements of Section 422 of the Code, then the Option, or any portion thereof, as necessary, shall be deemed a non-statutory stock option granted under the Plan. Except as otherwise indicated by the context, the term “**Participant**,” as used in this Agreement, shall include any person who acquires the right to exercise this Option validly under its terms.

2. [Vesting Schedule.]¹ Subject to the provisions of the Plan, including but not limited to, Section 7 (Termination of Employment) and Section 8 (Effect of Change in Control), this Option shall vest and become exercisable at the time or times set forth in the accompanying Notice. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the Stated Expiration Date, subject to the provisions hereof and of the Plan. No Option may be exercised after the Stated Expiration Date.]

[Vesting Schedule; Change in Control.] Subject to Section 7 (Termination of Employment) of the Plan, this Option shall vest and become exercisable at the time or times set forth in the accompanying Notice. In the event of a Change in Control, then immediately prior to the effective date of a Change in Control, this Option shall be fully vested and become exercisable as to the Total Number of Shares, it being understood that in no event shall the Participant be entitled to exercise this Option to purchase greater than the Total Number of Shares as a result of this provision. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the Stated Expiration Date, subject to the provisions hereof and of the Plan. No Option may be exercised after the Stated Expiration Date.]

¹ Unless otherwise determined at the time of the Grant of the Option and as set forth in the applicable Option Agreement, the vesting schedule for each Option will be subject to the provisions of the 2018 Stock Incentive Plan.

3. Exercise of Option.

(a) Form of Exercise. Each election to exercise this Option shall be in writing in substantially the form of the Notice of Stock Option Exercise attached to this Agreement as **Exhibit A**, signed by the Participant, and received by the Company at its principal office, accompanied by this Agreement, and payment in full in the manner provided in the Plan. The Participant may purchase less than the number of Shares subject to this Option; provided that, no partial exercise of this Option may be for any fractional share.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in Section 2 or this Section 3, this Option may not be exercised unless the Participant, at the time of the exercise of this Option, is, and has been at all times since the Grant Date, an employee to or of the Company or any subsidiary of the Company as defined in Section 424(f) of the Code (an “**Eligible Participant**”); provided, however that if the Participant terminates its relationship with the Company and thereafter resumes its relationship with the Company during the Exercise Period, it shall not be deemed to have undergone a termination of its relationship and the Option shall continue to be outstanding according to its terms.

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in Section 2 or paragraph (d) below, the right to exercise this Option shall terminate three months after such cessation (but in no event after the Stated Expiration Date); provided that, this Option shall be exercisable only to the extent that the Participant was entitled to exercise this Option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Stated Expiration Date, violates the non-competition or confidentiality provisions of any employment agreement, confidentiality and nondisclosure agreement, or other agreement between the Participant and the Company, the right to exercise this Option shall terminate immediately upon such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Stated Expiration Date while the Participant is an Eligible Participant, this Option shall be exercisable, within the period of one year following the date of death or disability of the Participant, by the Participant (or in the case of death by an authorized transferee); provided that, this Option shall be exercisable only to the extent that this Option was exercisable by the Participant on the date of the Participant’s death or disability, and further provided that this Option shall not be exercisable after the Stated Expiration Date.

(e) Method of Payment. Payment of the Exercise Price shall be made by any of the following, or a combination thereof, at the election of the Participant; provided, however, that such exercise method does not then violate any applicable law and, provided further, that the portion of the Exercise Price equal to the par value of the Shares must be paid in cash or other legal consideration permitted by the Delaware General Corporation Law:

(i) cash;

(ii) check;

(iii) surrender of Shares held for the requisite period, if any, necessary to avoid a charge to the Company’s earnings for financial reporting purposes, or delivery of a properly executed form of attestation of ownership of Shares as the Administrator may require which have a Fair Market Value on the date of surrender or attestation equal to the aggregate Exercise Price of the Shares as to which the Option is being exercised;

(iv) payment through a “net exercise” such that, without the payment of any funds, the Participant may exercise the Option and receive the net number of Shares equal to (x) the number of Shares as to which the Option is being exercised, multiplied by (y) a fraction, the numerator of which is the Fair Market Value per Share (on such date as is determined by the Administrator) less the Exercise Price per Share, and the denominator of which is such Fair Market Value per Share (the number of net Shares to be received shall be rounded down to the nearest whole number of Shares);

(v) payment through a broker-dealer sale and remittance procedure pursuant to which the Participant (1) shall provide written instructions to a Company-designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares and (2) shall provide written directives to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm in order to complete the sale transaction;

(vi) If the exercise of the Option within the applicable times periods set forth in this Section is prevented because such exercise would constitute a violation of applicable law, the Option shall remain outstanding until one (1) month after the date the Participant is notified by the Company that the Option is exercisable, but in no event later than the Stated Expiration Date set forth in the Notice; or

(vii) The Company shall not be obligated to deliver any stock unless and until all applicable Federal and state laws and regulations have been complied with, nor in the event the outstanding common stock is at the time listed upon the Nasdaq Capital Market or any stock exchange, unless and until the shares to be delivered have been listed, or authorized to be added to the list by the Nasdaq Capital Market or the exchanges where it is listed, nor unless and until all legal matters in connection with the issuance and delivery of the shares have been approved by counsel for the Company. The Optionee shall have no rights as a shareholder until the stock is actually delivered to him.

4. Tax Matters.

(a) Withholding. No Shares shall be issued pursuant to the exercise of this Option unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of this Option.

(b) Disqualifying Disposition. If the Participant disposes of Shares acquired upon exercise of this Option within two years from the Grant Date or one year after such Shares were acquired pursuant to exercise of this Option, the Participant shall immediately notify the Company in writing of such disposition and shall timely satisfy all resulting tax obligations and shall hold the Company harmless with respect to any such tax obligations.

(c) Code Section 409A. The Exercise Price is intended to be the Fair Market Value of the Common Stock on the Grant Date. The Company has determined the Fair Market Value of the Common Stock in good faith and using the reasonable application of a reasonable valuation method, for purposes of determining the Exercise Price. Notwithstanding this, the Internal Revenue Service may assert that the Fair Market Value of the Common Stock on the Grant Date was greater than the Exercise Price. Under Code Section 409A, if the Exercise Price is less than the Fair Market Value of the Common Stock as of the Grant Date, this Option may be treated as a form of deferred compensation and the Participant may be subject to an additional twenty percent (20%) tax, plus interest and possible penalties. The Participant acknowledges that the Company has advised the Participant to consult with a tax adviser regarding the potential impact of Code Section 409A and that the Company, in the exercise of its sole discretion and without the consent of the Participant, may amend or modify this Agreement in any manner and delay the

payment of any amounts payable pursuant to this Agreement to the minimum extent necessary to meet the requirements of Code Section 409A, as amplified by any Internal Revenue Service or U.S. Treasury Department regulations or guidance as the Company deems appropriate or advisable.

5. Nontransferability of Option. This Option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this Option shall be exercisable only by the Participant.

6. Provisions of the Plan. This Option is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Option.

7. Entire Agreement; Governing Law. The Plan and the accompanying Notice are incorporated herein by reference. This Agreement, the Notice and the Plan constitute the entire agreement between the Company and the Participant with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Participant with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware, as to matters within the scope thereof, and the internal laws of the State of North Carolina (without reference to conflict of law provisions), as to all other matters.

8. Amendment. Except as set forth in Section 5(c), this Agreement may not be modified or amended in any manner adverse to the Participant's interest except by means of a writing signed by the Company and Participant.

9. No Guarantee of Continued Service. THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF OPTIONS PURSUANT TO THE VESTING SCHEDULE SET FORTH HEREIN AND IN THE NOTICE ARE EARNED ONLY BY CONTINUING SERVICE AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). THE PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED SERVICE FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE PARTICIPANT'S SERVICE WITH OR WITHOUT CAUSE.

* * *

Exhibit A

HEAT BIOLOGICS, INC.

**NOTICE OF INCENTIVE STOCK OPTION EXERCISE
2018 STOCK INCENTIVE PLAN**

The undersigned (the “**Participant**”) has previously been awarded an incentive stock option (the “**Option**”) to purchase shares (the “**Shares**”) of the common stock of Heat Biologics, Inc., a Delaware corporation (the “**Company**”), pursuant to the Company’s 2018 Stock Incentive Plan (the “**Plan**”), and hereby notifies the Company of the Participant’s desire to exercise the Option on the terms set forth herein:

PARTICIPANT INFORMATION: Name: _____ Address: _____ _____ Taxpayer ID #: _____	OPTION INFORMATION: Grant Date: _____ Stated Expiration Date: _____ The 10 th anniversary of the Grant Date Exercise Price per Share: \$ _____ Total Number of Shares Covered by this Option: _____
EXERCISE INFORMATION: Number of Shares Being Purchased: _____ Aggregate Exercise Price: \$ _____ Form of Payment (check all that apply): <input type="checkbox"/> Check for \$ _____ made payable to “Heat Biologics, Inc.” <input type="checkbox"/> Cash in the amount of \$ _____ Value of Shares Delivered \$ _____ Number of Shares to be Received Based on Cashless Exercise _____ Please register the Shares in my name as follows: _____ (Print name as it is to appear on stock certificate)	

(Print Participant Name)

(Signature)

Date: _____

FORM OF
HEAT BIOLOGICS, INC.
NON-STATUTORY STOCK OPTION AGREEMENT

Granted Under 2018 Stock Incentive Plan

1. **Grant of Option.** This Non-statutory Stock Option Agreement (the “**Agreement**”) evidences the grant by Heat Biologics, Inc., a Delaware corporation (the “**Company**”), on the Grant Date to the Participant of an option (this “**Option**”) to purchase, in whole or in part, on the terms provided herein and in the Company’s 2018 Stock Incentive Plan (the “**Plan**”), the Total Number of Shares Covered by this Option (the “**Total Number of Shares**”) at the Exercise Price per Share, all as defined and set forth in the accompanying Notice of Non-statutory Stock Option (the “**Notice**”). Capitalized terms that are not otherwise defined herein or in the Notice shall have the meanings given to such terms in the Plan.

It is intended that this Option shall not be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the “**Code**”). Except as otherwise indicated by the context, the term “**Participant**,” as used in this Agreement, shall include any person who acquires the right to exercise this Option validly under its terms.

2. **[Vesting Schedule; Change in Control.]**¹ Subject to the provisions of the Plan, including but not limited to, Section 7 (Termination of Employment) and Section 8 (Effect of Change in Control), this Option shall vest and become exercisable at the time or times set forth in the accompanying Notice. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the Stated Expiration Date, subject to the provisions hereof and of the Plan. No Option may be exercised after the Stated Expiration Date.]

[Vesting Schedule; Change in Control. Subject to Section 7 (Termination of Employment) of the Plan, this Option shall vest and become exercisable at the time or times set forth in the accompanying Notice. In the event of a Change in Control, then immediately prior to the effective date of a Change in Control, this Option shall be fully vested and become exercisable as to the Total Number of Shares, it being understood that in no event shall the Participant be entitled to exercise this Option to purchase greater than the Total Number of Shares as a result of this provision. Once exercisable, this Option shall continue to be exercisable at any time or times prior to the Stated Expiration Date, subject to the provisions hereof and of the Plan. No Option may be exercised after the Stated Expiration Date.]

3. **Exercise of Option.**

(a) **Form of Exercise.** Each election to exercise this Option shall be in writing in substantially the form of the Notice of Stock Option Exercise attached to this Agreement as **Exhibit A**, signed by the Participant, and received by the Company at its principal office, accompanied by this Agreement, and payment in full in the manner provided in the Plan. The Participant may purchase less than the number of Shares subject to this Option; **provided that**, no partial exercise of this Option may be for any fractional share.

¹ Unless otherwise determined at the time of the Grant of the Option and as set forth in the applicable Option Agreement, the vesting schedule for each Option will be subject to the provisions of the 2018 Stock Incentive Plan.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in this Section 3, this Option may not be exercised unless the Participant, at the time of the exercise of this Option, is, and has been at all times since the Grant Date, a service provider to or of the Company or any subsidiary of the Company as defined in Section 424(f) of the Code (an “**Eligible Participant**”).

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in paragraph (d) below, the right to exercise this Option shall terminate three months after such cessation (but in no event after the Stated Expiration Date); provided that, this Option shall be exercisable only to the extent that the Participant was entitled to exercise this Option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Stated Expiration Date, violates the non-competition or confidentiality provisions of any confidentiality and nondisclosure agreement, or other agreement between the Participant and the Company, the right to exercise this Option shall terminate immediately upon such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Stated Expiration Date while the Participant is an Eligible Participant, this Option shall be exercisable, within the period of one year following the date of death or disability of the Participant, by the Participant (or in the case of death by an authorized transferee); provided that, this Option shall be exercisable only to the extent that this Option was exercisable by the Participant on the date of the Participant’s death or disability, and further provided that this Option shall not be exercisable after the Stated Expiration Date.

(e) Method of Payment. Payment of the Exercise Price shall be made by any of the following, or a combination thereof, at the election of the Participant; provided, however, that such exercise method does not then violate any applicable law and, provided further, that the portion of the Exercise Price equal to the par value of the Shares must be paid in cash or other legal consideration permitted by the Delaware General Corporation Law:

(i) cash;

(ii) check;

(iii) surrender of Shares held for the requisite period, if any, necessary to avoid a charge to the Company’s earnings for financial reporting purposes, or delivery of a properly executed form of attestation of ownership of Shares as the Administrator may require which have a Fair Market Value on the date of surrender or attestation equal to the aggregate Exercise Price of the Shares as to which the Option is being exercised;

(iv) payment through a “net exercise” such that, without the payment of any funds, the Participant may exercise the Option and receive the net number of Shares equal to (x) the number of Shares as to which the Option is being exercised, multiplied by (y) a fraction, the numerator of which is the Fair Market Value per Share (on such date as is determined by the Administrator) less the Exercise Price per Share, and the denominator of which is such Fair Market Value per Share (the number of net Shares to be received shall be rounded down to the nearest whole number of Shares);

(v) payment through a broker-dealer sale and remittance procedure pursuant to which the Participant (1) shall provide written instructions to a Company-designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares and (2)

shall provide written directives to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm in order to complete the sale transaction;

(vi) If the exercise of the Option within the applicable times periods set forth in this Section is prevented because such exercise would constitute a violation of applicable law, the Option shall remain outstanding until one (1) month after the date the Participant is notified by the Company that the Option is exercisable, but in no event later than the Stated Expiration Date set forth in the Notice; or

(vii) The Company shall not be obligated to deliver any stock unless and until all applicable Federal and state laws and regulations have been complied with, nor in the event the outstanding common stock is at the time listed upon the Nasdaq Capital Market or any stock exchange, unless and until the shares to be delivered have been listed, or authorized to be added to the list by the Nasdaq Capital Market or the exchanges where it is listed, nor unless and until all legal matters in connection with the issuance and delivery of the shares have been approved by counsel for the Company. The Optionee shall have no rights as a shareholder until the stock is actually delivered to him.

4. Tax Matters.

(a) Withholding. No Shares shall be issued pursuant to the exercise of this Option unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding or other taxes required by law to be withheld in respect of this Option.

(b) Code Section 409A. The Exercise Price is intended to be not less than the Fair Market Value of the Common Stock on the Grant Date. The Company has determined the Fair Market Value of the Common Stock in good faith and using the reasonable application of a reasonable valuation method, for purposes of determining the Exercise Price. Notwithstanding this, the Internal Revenue Service may assert that the Fair Market Value of the Common Stock on the Grant Date was greater than the Exercise Price. Under Code Section 409A, if the Exercise Price is less than the Fair Market Value of the Common Stock as of the Grant Date, this Option may be treated as a form of deferred compensation and the Participant may be subject to an additional twenty percent (20%) tax, plus interest and possible penalties. The Participant acknowledges that the Company has advised the Participant to consult with a tax adviser regarding the potential impact of Code Section 409A and that the Company, in the exercise of its sole discretion and without the consent of the Participant, may amend or modify this Agreement in any manner and delay the payment of any amounts payable pursuant to this Agreement to the minimum extent necessary to meet the requirements of Code Section 409A, as amplified by any Internal Revenue Service or U.S. Treasury Department regulations or guidance as the Company deems appropriate or advisable.

5. Nontransferability of Option. This Option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this Option shall be exercisable only by the Participant.

6. Provisions of the Plan. This Option is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this Option. The number of shares of common stock subject to your option and your exercise price per share referenced in the Notice may be adjusted from time to time for certain events, including such as stock dividends, stock splits, mergers, recapitalizations, combinations of shares, reclassifications of shares, spin-offs and the other events specified in the Plan.

7. Entire Agreement; Governing Law. The Plan and the Notice are incorporated herein by reference. This Agreement, the Notice and the Plan constitute the entire agreement between the Company and the Participant with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Participant with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the General Corporation Law of the State of Delaware, as to matters within the scope thereof, and the internal laws of the State of Florida (without reference to conflict of law provisions), as to all other matters.

8. Amendment. Except as set forth in Section 5(b), this Agreement may not be modified or amended in any manner adverse to the Participant's interest except by means of a writing signed by the Company and Participant.

9. No Guarantee of Continued Service. THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF OPTIONS PURSUANT TO THE VESTING SCHEDULE SET FORTH HEREIN AND IN THE NOTICE ARE EARNED ONLY BY CONTINUING SERVICE AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). THE PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED SERVICE FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE PARTICIPANT'S SERVICE WITH OR WITHOUT CAUSE.

* * * * *

Exhibit A

HEAT BIOLOGICS, INC.

**NOTICE OF NON-STATUTORY STOCK OPTION EXERCISE
2018 STOCK INCENTIVE PLAN**

The undersigned (the “**Participant**”) has previously been awarded a non-statutory stock option (the “**Option**”) to purchase shares (the “**Shares**”) of the common stock of Heat Biologics, Inc., a Delaware corporation (the “**Company**”), pursuant to the Company’s 2018 Stock Incentive Plan (the “**Plan**”), and hereby notifies the Company of the Participant’s desire to exercise the Option on the terms set forth herein:

PARTICIPANT INFORMATION:	OPTION INFORMATION:
Name: _____	Grant Date: _____
Address: _____ _____	Stated Expiration Date: _____ The 10 th anniversary of the Grant Date
Taxpayer ID #: _____	Exercise Price per Share: \$ _____
	Total Number of Shares Covered by this Option: _____

EXERCISE INFORMATION:

Number of Shares Being Purchased: _____

Aggregate Exercise Price: \$ _____

Form of Payment (check all that apply): ☐ Check for \$ _____ made payable to “Heat Biologics, Inc.”
☐ Cash in the amount of \$ _____

Value of Shares Delivered \$ _____

Number of Shares to be Received Based on Cashless Exercise _____

Please register the Shares in my name as follows: _____
(Print name as it is to appear on stock certificate)

(Print Participant Name)

(Signature)

Date: _____

**FORM OF
HEAT BIOLOGICS, INC.
NOTICE OF AWARD OF RESTRICTED STOCK UNITS
2018 STOCK INCENTIVE PLAN**

Heat Biologics, Inc. a Delaware corporation (the “**Company**”), awards to the undersigned (the “**Participant**”) the following restricted stock units to acquire shares (the “**Shares**”) of the common stock of the Company, par value \$0.0002 per share (the “**Common Stock**”), pursuant to the Company’s 2018 Stock Incentive Plan (the “**Plan**”):

Participant: []

Total Number of Restricted Stock Units []
(each Restricted Stock Unit represents
the right to receive one share of Common
Stock on the applicable vesting date):

Award Date: []

Vesting Commencement Date: []

Vesting Schedule: The Total Number of Restricted Stock Units shall vest as follows: [insert vesting schedule][four (4) equal annual installments commencing on the Award Date, subject to Participant continuing to be an employee or service provider through each such date. For the avoidance of doubt, the Restricted Stock Units shall vest as follows: (i) one-fourth on the Award Date; (ii) an additional one-fourth on the first anniversary of the Award Date; (iii) an additional one-fourth on the second anniversary of the Award Date; and (iv) the final one-fourth on the third anniversary of the Award Date].

Final Vesting Date: [Insert Final Vesting Date][The third anniversary of the Award Date, however, any unvested Restricted Stock Units may expire earlier pursuant to Section 2 of the Restricted Stock Unit Award Agreement if the Participant’s relationship with the Company is terminated].

These Restricted Stock Units are awarded under and governed by the terms and conditions of the Plan and the Restricted Stock Unit Award Agreement, both of which are incorporated herein by reference. By signing below, the Participant accepts these Restricted Stock Units, acknowledges receipt of a copy of the Plan and the Restricted Stock Unit Award Agreement, and agrees to the terms thereof.

NAME

HEAT BIOLOGICS, INC.:

(Signature)

By: _____

Name: _____

Address: _____

Title: _____

Date: _____

HEAT BIOLOGICS, INC.

RESTRICTED STOCK UNIT AWARD AGREEMENT

Awarded under the 2018 Stock Incentive Plan

HEAT BIOLOGICS, INC., a Delaware corporation (the “**Company**”), has awarded to you the Restricted Stock Units (“**RSUs**”) specified in the Notice of Award of Restricted Stock Units above (the “**Notice**”), which is incorporated into this Restricted Stock Unit Award Agreement (the “**Agreement**”) and deemed to be a part hereof. The RSUs have been awarded to you under Section 6(g) of the Company’s 2018 Stock Incentive Plan (the “**Plan**”), on the terms and conditions specified in the Notice and this Agreement. Capitalized terms that are not otherwise defined herein or in the Notice shall have the meanings given to such terms in the Plan.

1. RESTRICTED STOCK UNIT AWARD

The Compensation Committee of the Board of Directors of Heat Biologics, Inc. (the “**Committee**”) has awarded to you on the Award Date an Award of RSUs as designated herein subject to the terms, conditions, and restrictions set forth in this Agreement and the Plan. Each RSU shall represent the conditional right to receive, upon vesting of the RSU, one share of common stock of the Company (the “**Common Stock**”) (subject to any tax withholding as described in Section 3). RSUs include the right to receive dividend equivalents as specified in Section 4 (“**Dividend Equivalents**”). The purpose of such Award is to motivate and retain you as an employee of the Company or a subsidiary of the Company, to encourage you to continue to give your best efforts for the Company’s future success, and to increase your proprietary interest in the Company. Except as may be required by law, you are not required to make any payment (other than payments for taxes pursuant to Section 3 hereof) or provide any consideration other than the rendering of future services to the Company or a subsidiary of the Company.

2. RESTRICTIONS, FORFEITURES, VESTING AND SETTLEMENT

Except as otherwise provided in this Section 2, RSUs shall be subject to the restrictions and conditions set forth herein during the Restricted Period (as defined below). Vesting of the RSUs is conditioned upon you remaining continuously employed by the Company or a subsidiary of the Company following the Award Date until the relevant vesting date, subject to the provisions of this Section 2. Assuming satisfaction of such employment conditions, the RSUs shall vest at the time or times set forth in the Vesting Schedule included in the accompanying Notice. The “Restricted Period” shall mean that period of time until any and all requirements or restrictions contained in this Agreement or in the Plan have been satisfied, terminated or expressly waived by the Company in writing.

- (a) Nontransferability. During the Restricted Period and any further period prior to the vesting of your RSUs, you may not sell, transfer, pledge or assign any of the RSUs or your rights relating thereto.
- (b) Time of Settlement. RSUs shall be settled promptly upon expiration of the Restricted Period without forfeiture of the RSUs (*i.e.*, upon vesting) by delivery of one share of Common Stock for each RSU being settled; provided, however, that settlement of an RSU shall be subject to the Plan, including if applicable the six-month delay rule in the Plan pursuant to Section 409A of the Code, and subject to any tax withholding as described in Section 3). (*Note: This rule may apply to any portion of the RSUs that vests after the time you become Retirement eligible under the Plan, and could apply in other cases as well*). Settlement of RSUs or cash amounts that directly or indirectly result from Dividend Equivalents on RSUs or adjustments to RSUs shall occur at the time of settlement of, and subject to the restrictions and conditions that apply to, the awarded RSU. Until shares are delivered to you in settlement of RSUs, you shall have none of the rights of a stockholder of the Company with respect to the shares issuable in settlement of the RSUs, including the right to vote the shares and receive actual dividends and other distributions on the underlying shares of Common Stock. Shares of stock issuable in settlement of RSUs shall be delivered to you upon settlement in certificated form or in such other manner as the Company may reasonably determine.

[(c) Termination of Employment or Service; Change in Control.¹ Subject to the provisions of the Plan, including but not limited to, Section 7 (Termination of Employment) and Section 8 (Effect of Change in Control), the RSUs shall vest at the time or times set forth in the Vesting Schedule included in the accompanying Notice.]

[(c) Termination of Employment or Service; Change in Control. Subject to the provisions of Section 7 (Termination of Employment) of the Plan, the RSUs shall vest at the time or times set forth in the Vesting Schedule included in the accompanying Notice. In the event of a Change in Control, your RSUs shall become fully vested immediately prior to the effective date of a Change in Control provided you are still employed by, or providing services to, the Company or any of its subsidiaries immediately prior to the effective date of the Change in Control. The term "Change in Control" as applied to your RSUs may be modified in order to comply with Section 409A of the Code.]

(d) Other Terms.

- (i) You may, at any time prior to the expiration of the Restricted Period, waive all rights with respect to all or some of the RSUs by delivering to the Company a written notice of such waiver.
- (ii) Termination of employment includes any event if immediately thereafter you are no longer an employee of the Company or any subsidiary of the Company, subject to Section 2(h) hereof. References in this Section 2 to employment by the Company include employment by a subsidiary of the Company. Termination of employment means an event after which you are no longer employed by the Company or any subsidiary of the Company. Such an event could include the disposition of a subsidiary or business unit by the Company or a subsidiary.
- (iii) Upon any termination of your employment, any RSUs as to which the Restricted Period has not expired at or before such termination shall be forfeited. Other provisions of this Agreement notwithstanding, in no event will an RSU that has been forfeited thereafter vest or be settled.

(e) The following events shall not be deemed a termination of employment:

- (i) A transfer of you from the Company to a subsidiary, or vice versa, or from one subsidiary to another;
- (ii) A leave of absence, duly authorized in writing by the Company, for military service or sickness or for any other purpose approved by the Company if the period of such leave does not exceed ninety (90) days; and
- (iii) A leave of absence in excess of ninety (90) days, duly authorized in writing, by the Company, provided your right to reemployment is guaranteed either by a statute or by contract.

However, failure of you to return to active service with the Company or a subsidiary at the end of an approved leave of absence shall be deemed a termination of employment. During a leave of absence as defined in (ii) or (iii), although you will be considered to have been continuously employed by the Company or a subsidiary and not to have had a termination of employment under this Section 2, the Committee may specify that such leave period shall not be counted in determining the period of employment for purposes of the vesting of the RSUs. In such case, the vesting dates for unvested RSUs shall be extended by the length of any such leave of absence.

¹ Unless otherwise determined at the time of the Grant of the RSUs and as set forth in the applicable RSU Award Agreement, the vesting schedule for each grant of RSUs will be subject to the provisions of the 2018 Stock Incentive Plan.

3. TAXES

At such time as the Company is required to withhold taxes with respect to the RSUs, or at an earlier date as determined by the Company, you shall make remittance to the Company of an amount sufficient to cover such taxes or make such other arrangement regarding payments of such taxes as are satisfactory to the Committee. The Company and its subsidiaries shall, to the extent permitted by law, have the right [and, at the request of the Participant, shall use its commercially reasonable efforts,] to deduct such amount from any payment of any kind otherwise due to you, including by means of mandatory withholding of shares deliverable in settlement of your RSUs to satisfy the mandatory tax withholding requirements or other tax obligations of the Participant in connection with the vesting of any RSUs. When the Dividend Equivalents you receive under Section 4, if any, become payable to you, they will be compensation (wages) for tax purposes and will be included on your W-2 form. The Company will be required to withhold applicable taxes on such Dividend Equivalents. The Company may deduct such taxes either from the gross Dividend Equivalents payable on such RSUs or from any other cash payments to be made to or on account of you or may require you to make prompt remittance to the Company of such tax amounts. Any cash payment to you under Section 4 of the Agreement will be included in your W-2 form as compensation and subject to applicable tax withholding.

4. DIVIDEND EQUIVALENTS AND ADJUSTMENTS

- (a) Dividend Equivalents shall be paid or credited on RSUs (other than RSUs that, at the relevant record date, previously have been settled or forfeited) as follows, except that the Committee may specify an alternative treatment from that specified in (i), (ii), or (iii) below for any dividend or distribution:
- (i) *Cash Dividends.* If the Company declares and pays a dividend or distribution on Common Stock in the form of cash, then you will be credited with a cash amount as of the payment date for such dividend or distribution equal to the number of RSUs credited to you as of the record date for such dividend or distribution multiplied by the amount of cash actually paid as a dividend or distribution on each outstanding share of Common Stock at such payment date. Any amounts credited under this Section 4(a)(i) shall be subject to the restrictions and conditions that apply to the RSU with respect to which the amounts are credited and will be payable when the underlying RSU becomes payable. If the underlying RSU does not vest or is forfeited, any amounts credited under this Section 4(a)(i) with respect to the underlying RSU will also fail to vest and be forfeited.
 - (ii) *Non-Share Dividends.* If the Company declares and pays a dividend or distribution on Common Stock in the form of property other than shares, then a number of additional RSUs shall be credited to you as of the payment date for such dividend or distribution equal to the number of RSUs credited to you as of the record date for such dividend or distribution multiplied by the Fair Market Value of such property actually paid as a dividend or distribution on each outstanding share of Common Stock at such payment date, divided by the Fair Market Value of a share at such payment date. Any RSUs credited to you under this Section 4(a)(ii) shall be subject to the restrictions and conditions that apply to the RSU with respect to which the RSUs are credited and will be payable when the underlying RSU becomes payable. If the underlying RSU does not vest or is forfeited, any RSUs credited under this Section 4(a)(ii) with respect to the underlying RSU will also fail to vest and be forfeited. You will be eligible to receive Dividend Equivalents on any RSUs credited to you under this Section 4(a)(ii).
 - (iii) *Common Stock Dividends and Splits.* If the Company declares and pays a dividend or distribution on Common Stock in the form of additional shares, or there occurs a forward split of Common Stock, then a number of additional RSUs shall be credited to you as of the payment date for such dividend or distribution or forward split equal to the number of RSUs credited to you as of the record date for such dividend or distribution or split multiplied by the number of additional shares actually paid as a dividend or distribution or issued in such split in respect of each outstanding share of Common Stock. Any RSUs credited to you under this Section 4(a)(iii) shall be subject to the restrictions and conditions that apply to the RSU with respect to which the RSUs are credited and will be payable when the underlying RSU becomes payable. If the underlying RSU does not vest or is forfeited, any RSUs credited under this Section 4(a)(iii) with respect to the underlying RSU will also fail to vest and be forfeited. You will be eligible to receive Dividend Equivalents on any RSUs credited to you under this Section 4(a)(iii).

- (b) The number of your RSUs and other related terms shall be appropriately adjusted, in order to prevent dilution or enlargement of your rights with respect to RSUs, to reflect any changes in the outstanding shares of Common Stock resulting from any event referred to in Section 4(b) of the Plan, taking into account any RSUs credited to you in connection with such event under Section 4(a) hereof.

5. EFFECT ON OTHER BENEFITS

In no event shall the value, at any time, of the RSUs or any other payment under this Agreement be included as compensation or earnings for purposes of any other compensation, retirement, or benefit plan offered to employees of the Company unless otherwise specifically provided for in such plan.

6. RIGHT TO CONTINUED EMPLOYMENT

Nothing in the Plan or this Agreement shall confer on you any right to continue in the employ of the Company or any subsidiary or any specific position or level of employment with the Company or any subsidiary or affect in any way the right of the Company or any subsidiary to terminate your employment without prior notice at any time for any reason or no reason.

7. ADMINISTRATION; UNFUNDED OBLIGATIONS

The Committee shall have full authority and discretion, subject only to the express terms of the Plan, to decide all matters relating to the administration and interpretation of the Plan and this Agreement, and all such Committee determinations shall be final, conclusive, and binding upon the Company, you, and all interested parties. Any provision for distribution in settlement of your RSUs and other obligations hereunder (including cash amounts set aside under Section 4(a)(i)) shall be by means of bookkeeping entries on the books of the Company and shall not create in you or any beneficiary any right to, or claim against any, specific assets of the Company, nor result in the creation of any trust or escrow account for you or any beneficiary. You and any of your beneficiaries entitled to any settlement or distribution hereunder shall be a general creditor of the Company.

8. AMENDMENT

This Agreement shall be subject to the terms of the Plan, as amended from time to time, except that the Award which is the subject of this Agreement may not be materially adversely affected by any amendment or termination of the Plan approved after the Award Date without your written consent.

9. SEVERABILITY AND VALIDITY

The various provisions of this Agreement are severable, and any determination of invalidity or unenforceability of any one provision shall have no effect on the remaining provisions.

10. GOVERNING LAW

Except to the extent preempted by any applicable federal law, this Agreement shall be construed and administered in accordance with the laws of the State of Delaware, without reference to its principles of conflicts of law. The parties shall resolve all disputes, controversies and differences which may arise between the parties, out of or in relation to or in connection with this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, after discussion in good faith attempting to reach an amicable solution. Such discussion will begin immediately after one party has delivered to the other party a request for discussion. If the dispute, controversy, or claim cannot be resolved within 30 days following the date on which the request for discussion is delivered, then it will be finally settled by arbitration held in Durham, North Carolina in accordance with the latest Rules of the American Arbitration Association. Such arbitration shall be conducted by one arbitrator appointed as follows: each party will appoint one arbitrator and the appointed arbitrators shall appoint the deciding arbitrator. The decision of the tribunal shall be final and may not be appealed. The arbitral tribunal may, in its discretion award fees and costs as part of its award. Judgment on the arbitral award may be entered by any court of competent jurisdiction, including any court that has jurisdiction over either of the party or any of their assets.

11. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and heirs of the respective parties.

12. DATA PRIVACY

By entering into this agreement, you (i) authorize the Company, and any agent of the Company administering the Plan or providing Plan recordkeeping services, to disclose to the Company or any of its subsidiaries such information and data as the Company or any such subsidiary shall request in order to facilitate the award of RSUs and the administration of the Plan; (ii) waive any data privacy rights you may have with respect to such information; and (iii) authorize the company to store and transmit such information in electronic form.

13. ENTIRE AGREEMENT AND NO ORAL MODIFICATION OR WAIVER

This Agreement contains the entire understanding of the parties. This Agreement shall not be modified or amended except in writing duly signed by the parties, except that the Company may adopt a modification or amendment to the Agreement that is not materially adverse to you in writing signed only by the Company. Any waiver of any right or failure to perform under this Agreement shall be in writing signed by the party granting the waiver and shall not be deemed a waiver of any subsequent failure to perform.

HEAT BIOLOGICS, INC.

By: _____

I have read this Agreement in its entirety. I understand that this Award has been granted to provide a means for me to acquire and/or expand an ownership position in Heat Biologics, Inc., and it is expected that, if applicable, I will retain the stock I receive upon the vesting of this award consistent with the Company's share retention guidelines. I acknowledge and agree that sales of shares will be subject to the Company's policy regulating trading by employees. In accepting this Award, I hereby agree that such broker-dealer as the Company may choose to administer the Plan, may provide the Company with any and all account information.

**FORM OF
HEAT BIOLOGICS, INC.
RESTRICTED STOCK AGREEMENT
2018 STOCK INCENTIVE PLAN**

THIS RESTRICTED STOCK AGREEMENT (the “*Agreement*”) is made and entered into as of _____ (the “*Grant Date*”), by and between **Heat Biologics, Inc.**, a Delaware corporation (the “*Company*”), and _____ (the “*Participant*”).

Subject to the Additional Terms and Conditions attached hereto and incorporated herein by reference as part of this Agreement, the Company hereby awards as of the Grant Date to the Participant the shares of the Company’s restricted Common Stock (the “*Restricted Stock*”) described below (the “*Restricted Stock Award*”) pursuant to the Heat Biologics, Inc. 2018 Stock Incentive Plan (the “*Plan*”). Capitalized terms that are not otherwise defined in this Agreement shall have the meanings given to such terms in the Plan.

Participant: []

Grant Date: []

Total Number of Shares of
Restricted Stock Awarded: []

Vesting Schedule: The Restricted Stock shall vest according to the Vesting Schedule attached hereto as Schedule 1. The Restricted Stock that become vested on each Vesting Date pursuant to the Vesting Schedule are herein referred to as the “*Vested Restricted Stock*.”

The Restricted Stock is awarded under and governed by the terms and conditions of this Restricted Stock Agreement and the Plan, which is incorporated herein by reference. By signing below, the Participant accepts the Restricted Stock Award, acknowledges receipt of a copy of the Plan and this Restricted Stock Agreement, and agrees to the terms thereof.

**NAME OF
PARTICIPANT:**

HEAT BIOLOGICS, INC.:

(Signature)

By: _____

Name: _____

Address: _____

Title: _____

**ADDITIONAL TERMS AND CONDITIONS OF
HEAT BIOLOGICS, INC.
RESTRICTED STOCK AGREEMENT**

1. Restricted Stock Held in Plan Name. The **2018 STOCK INCENTIVE PLAN**

Restricted Stock shall be issued in the name of the Plan and held for the account and benefit of the Participant. The Committee (as defined in the Plan) shall cause periodic statements of account to be delivered to the Participant, at such time or times as the Committee may determine in its sole discretion, showing the number of Restricted Stock held by the Plan on behalf of the Participant. Subject to other Additional Terms and Conditions, the Committee shall cause one or more certificates to be delivered to the Participant as soon as administratively practicable following the date that all or any portion of the Restricted Stock become Vested Restricted Stock.

2. Condition to Delivery of Vested Restricted Stock.

(a) If Participant makes a timely election pursuant to Section 83(b) of the Code, it is a condition to receiving the Vested Restricted Stock that Participant must deliver to the Company, within thirty (30) days of making the election pursuant to said Section 83(b) as to all or any portion of the Restricted Stock, either cash or a certified check payable to the Company in the amount of all of the tax withholding obligations (whether federal, state or local), imposed on the Company by reason of the making of an election pursuant to said Section 83(b),

(b) If the Participant does not make a timely election pursuant to Section 83(b) of the Code as to all of the Restricted Stock, the Participant may notify the Company in writing, which notice must be received by the Company at least thirty (30) days prior to the date Restricted Stock become Vested Restricted Stock (or such later date as the Committee may permit), that the Participant wishes to pay in cash all of the tax withholding obligations (whether federal, state or local) imposed on the Company by reason of the vesting of some or all of the Restricted Stock. As a condition to receiving the Vested Restricted Stock, Participant must deliver to the Company no later than three (3) business days of the vesting either cash or a certified check payable to the Company in the amount of all of the tax withholding obligations (whether federal, state or local) imposed on the Company by reason of the vesting of the Vested Restricted Stock to which the election applies.

(c) If the Participant does not make a timely election pursuant to Section 83(b) of the Code as provided in Section 2(a), or deliver a timely election to make a supplemental payment with cash or by certified check for tax withholding obligations as provided in Section 2(b) as to all or a portion of the Vested Restricted Stock, Participant will be deemed to have elected to have the actual number of Vested Restricted Stock reduced by the smallest number of whole shares of underlying Common Stock which, when multiplied by the fair market value of the underlying Common Stock, as determined by the Committee, on the date of the vesting event is sufficient to satisfy the amount of the tax withholding obligations imposed on the Company by reason of the vesting of such Vested Restricted Stock (the “**Withholding Election**”). Participant understands and agrees that Participant’s acceptance of this Restricted Stock Award will be deemed to be Participant’s election to make a Withholding Election pursuant to this Section 2(c) and such other consistent terms and conditions prescribed by the Committee.

(d) In addition to the provisions of Sections 2(a)-(c), if the Participant has attained the age of 62, and at least 12 months and one day has elapsed since the Grant Date, the Participant has a taxable event (“**Taxable Event**”) since Participant could voluntarily terminate employment and receive the Restricted Stock under Section 4(b)(iii). If the Participant has not made a timely election pursuant to Section 83(b) of the Code as to all of the Restricted Stock, the Participant may notify the Company in writing, which

notice must be received by the Company at least thirty (30) days prior to the Taxable Event, that the Participant wishes to pay in cash all of the tax withholding obligations (whether federal, state or local) to be withheld by reason of the Taxable Event. If the Participant has not made a timely election pursuant to Section 83(b) of the Code as provided in Section 2(a), delivered a timely election to make a supplemental payment with cash or by certified check for tax withholding obligations, or delivered the supplemental payment within three (3) business days of the Taxable Event, Participant will be deemed to have elected to have the actual number of Restricted Stock reduced by the smallest number of whole shares of the underlying Common Stock which, when multiplied by the fair market value of the underlying Common Stock, as determined by the Committee, on the date of the Taxable Event that is sufficient to satisfy the amount of the tax withholding obligations by reason of the Taxable Event (the “**Taxable Event Withholding Election**”). A stock certificate for such Restricted Stock (net of any tax withholdings) will be issued and held by the Company and delivered to Participant after the Vesting Date or as otherwise provided herein. Participant understands and agrees that Participant’s acceptance of this Restricted Stock Award will be deemed to be Participant’s election to make a Taxable Event Withholding Election pursuant to this Section 2(d) and such other consistent terms and conditions prescribed by the Committee.

(e) In addition to the provisions of Sections 2(a)-(d), if Participant is terminated by the Company other than for Cause, Participant will be deemed to have elected to have the actual number of Restricted Stock that will vest pursuant to the terms of the Plan reduced by the smallest number of whole shares of the underlying Common Stock which, when multiplied by the fair market value of the underlying Common Stock, as determined by the Committee, is sufficient to satisfy the amount of the tax withholding obligations imposed on the Company by reason of the vesting of such Restricted Stock. The date for the withholding will be the date the tax withholding obligation is imposed on the Company, as determined by the Company. A stock certificate for such Restricted Stock (net of any tax withholdings) will be issued and held by the Company and delivered to Participant after the Vesting Date or as otherwise provided herein. Participant understands and agrees that Participant’s acceptance of this Restricted Stock Award will be deemed to be Participant’s election to make a tax withholding election pursuant to this Section 2(e) and such other consistent terms and conditions prescribed by the Committee.

(f) The Committee reserves the right to give no effect to a withholding election under Sections 2(c), (d) or (e) in which case the Participant will remain obligated as a condition to receiving the Vested Restricted Stock to satisfy applicable tax withholding obligations with cash or by a certified check in the manner provided by the Committee. If the Committee elects not to give effect to a withholding election under Sections 2(c), (d) or (e), it shall provide the Participant with written notice reasonably in advance of the applicable vesting event.

3. **Rights as Stockholder.** The Restricted Stock will be held for the Participant by the Company until the applicable Vesting Date. Participant shall have all the rights of a stockholder on shares of Restricted Stock that vest. With respect to unvested Restricted Stock: (a) Participant shall have the right to vote such shares at any meeting of stockholders of the Company; (b) Participant shall have and the right to receive, free of vesting restrictions (but subject to applicable withholding taxes) all cash dividends paid with respect to such shares; and (c) any non-cash dividends and other non-cash proceeds of such shares, including stock dividends and any other securities issued or distributed in respect of such shares shall be subject to the same vesting and forfeiture conditions as the shares of Restricted Stock to which they relate, and the term “Restricted Stock” when used in this Agreement shall also include any related stock dividends and other securities issued or distributed in respect of such shares.

4. **Vesting, Forfeiture and Restrictions on Transfer of Restricted Stock.**

(a) **Generally.** The Restricted Stock which have become Vested Restricted Stock pursuant to the Vesting Schedule shall be considered as fully earned by the Participant, subject to the further provisions of this Section 4 and any applicable provisions of any employment agreement between the Participant and

the Company ("***Employment Agreement***"), as applicable, and the Company shall deliver certificates to the Participant as soon as administratively practicable following the Vesting Date or other vesting event and the payment of any required taxes pursuant to the terms of Section 2. Any Restricted Stock that do not become Vested Restricted Stock in accordance with the Vesting Schedule or the provisions of this Section 4 as of the Participant's termination of employment ("***Termination of Employment***") (as described in Section 7 of the Plan) with the Company and/or its affiliates will be forfeited back to the Company.

(b) Vesting and Forfeitures upon Termination of Employment or Service and/or Change in Control.

(i) Termination by Participant. Except as provided in Section 4(b)(ii), upon a Termination of Employment prior to the Vesting Date effected by the Participant for any reason all Restricted Stock shall be forfeited as of the effective date of such Termination of Employment.

[(ii) Termination of Employment or Service; Change in Control.¹ Subject to the provisions of the Plan, including but not limited to, Section 7 (Termination of Employment) and Section 8 (Effect of Change in Control), the Restricted Stock shall become vested at the time or times set forth in the Vesting Schedule.]

[(ii) Termination of Employment or Service; Change in Control. Subject to the provisions of Section 7 (Termination of Employment) of the Plan, the Restricted Stock shall become vested at the time or times set forth in the Vesting Schedule. In the event of a Change in Control, all Restricted Stock shall become fully vested immediately prior to the effective date of a Change in Control provided you are still employed by, or providing services to, the Company or any of its subsidiaries immediately prior to the effective date of the Change in Control.]

(c) Certain Breaches of Employment Agreement. Notwithstanding anything to the contrary herein, if, at any time, the Company determines that the Participant has breached any of the terms, provisions and restrictions imposed upon Participant under the Employment Agreement (if any), all of the Restricted Stock, including any Restricted Stock that have become Vested Restricted Stock, shall be forfeited. Such forfeiture shall occur without limiting the Company's other rights and remedies available under the Employment Agreement.

(d) Restrictions on Transfer of Restricted Stock. Participant shall effect no disposition of Restricted Stock prior to the date that an unrestricted certificate for Vested Restricted Stock in his name is delivered to him by the Committee; provided, however, that this provision shall not preclude a transfer by will or the laws of descent and distribution in the event of the death of the Participant.

(e) Legends. Participant agrees that the Company may endorse any certificates for Restricted Stock or Vested Restricted Stock with such legends to reflect the restrictions provided for herein or otherwise required by applicable federal or state securities laws. The Company need not register a transfer of the Restricted Stock and may also instruct its transfer agent not to register the transfer of the Restricted Stock unless the conditions specified in any legends are satisfied.

5. Removal of Legend and Transfer Restrictions. Any restrictive legends and any related stop transfer instructions may be removed at the direction of the Committee and the Company shall issue necessary replacement certificates without that portion of the legend to the Participant as of the date that the Committee determines that such legend(s) and/or instructions are no longer applicable.

¹ Unless otherwise determined at the time of the Grant of the Restricted Stock and as set forth in the applicable Restricted Stock Agreement, the vesting schedule for the Restricted Stock will be subject to the provisions of the 2018 Stock Incentive Plan.

6. Change in Capitalization.

(a) The number and kind of Restricted Stock shall be proportionately adjusted to reflect a merger, consolidation, reorganization, recapitalization, reincorporation, stock split, stock dividend or other change in the capital structure of the Company in accordance with the terms of the Plan. All adjustments made by the Committee under this Section shall be final, binding, and conclusive upon all parties.

(b) The existence of the Plan and the Restricted Stock Award shall not affect the right or power of the Company to make or authorize any adjustment, reclassification, reorganization or other change in its capital or business structure, any merger or consolidation of the Company, any issue of debt or equity securities having preferences or priorities as to the Common Stock or the rights thereof, the dissolution or liquidation of the Company, any sale or transfer of all or part of its business or assets, or any other corporate act or proceeding.

7. Governing Law. Except to the extent preempted by any applicable federal law, this Agreement shall be construed and administered in accordance with the laws of the State of Delaware, without reference to its principles of conflicts of law. The parties shall resolve all disputes, controversies and differences which may arise between the parties, out of or in relation to or in connection with this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, after discussion in good faith attempting to reach an amicable solution. Such discussion will begin immediately after one party has delivered to the other party a request for discussion. If the dispute, controversy, or claim cannot be resolved within 30 days following the date on which the request for discussion is delivered, then it will be finally settled by arbitration held in Durham, North Carolina in accordance with the latest Rules of the American Arbitration Association. Such arbitration shall be conducted by one arbitrator appointed as follows: each party will appoint one arbitrator and the appointed arbitrators shall appoint the deciding arbitrator. The decision of the tribunal shall be final and may not be appealed. The arbitral tribunal may, in its discretion award fees and costs as part of its award. Judgment on the arbitral award may be entered by any court of competent jurisdiction, including any court that has jurisdiction over either of the party or any of their assets.

8. Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors, and permitted assigns of the parties.

9. Notice. Except as otherwise specified herein, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been given if personally delivered or if sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the proposed recipient at the last known address of the recipient. Any party may designate any other address to which notices shall be sent by giving notice of the address to the other parties in the same manner as provided herein.

10. Severability. In the event that any one or more of the provisions or portion thereof contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the same shall not invalidate or otherwise affect any other provisions of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision or portion thereof had never been contained herein.

11. Entire Agreement. Subject to the terms and conditions of the Plan, and the applicable provisions of the Employment Agreement (if any), this Agreement expresses the entire understanding and agreement of the parties with respect to the subject matter. In the event of any conflict between the provisions of the Plan and the terms of this Agreement, the provisions of the Plan will control. The Restricted Stock Award

has been made pursuant to the Plan and an administrative record is maintained by the Committee indicating under which plan the Restricted Stock Award is authorized.

12. Violation. Any disposition of the Restricted Stock or any portion thereof shall be a violation of the terms of this Agreement and shall be void and without effect.

13. Headings. Paragraph headings used herein are for convenience of reference only and shall not be considered in construing this Agreement.

14. Specific Performance. In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the party or parties who are thereby aggrieved shall have the right to specific performance and injunction in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative.

15. No Right to Continued Retention. Neither the establishment of the Plan nor the award of Restricted Stock hereunder shall be construed as giving Participant the right to a continued service relationship with the Company or an affiliate.

16. Definitions. Any terms which are capitalized herein but not defined herein shall have the meaning set forth in the Plan.

SCHEDULE 1
TO HEAT BIOLOGICS, INC.
RESTRICTED STOCK AWARD
(Under the 2018 Stock Incentive Plan)

Vesting Schedule

- A. Provided that the Participant continues to be employed by the Company or any affiliate on the applicable Vesting Date described in this Schedule 1, the Restricted Stock shall become Vested Restricted Stock as follows:

<u>Percentage of Restricted Stock Vesting</u>	<u>Vesting Date</u>

Notwithstanding the foregoing vesting schedule, the events described in Section 4(b)(ii) of the Additional Terms and Conditions to the Agreement, the Plan, and any change in control provisions of any Employment Agreement, provide for accelerated vesting of all or a portion of the Restricted Stock to the extent and in the manner described by such provisions. Except as otherwise provided in Section 4(b)(ii) of the Additional Terms and Conditions to the Agreement, the Plan, and any change in control provisions of any Employment Agreement, all Restricted Stock shall be forfeited if the Participant experiences a Termination of Employment prior to the Vesting Date.

- B. The provisions of this Vesting Schedule are subject to, and limited by, all applicable provisions of the Agreement



The Chrysler Building
405 Lexington Avenue, 26th Floor
New York, New York 10174
Telephone: (212) 907-6457
Facsimile: (212) 208-4657

October 4, 2018

The Board of Directors
Heat Biologics, Inc.
801 Capitola Drive
Durham, NC 27713

Re: Registration Statement on Form S-8

Gentlemen:

We refer to the Registration Statement on Form S-8 (the "Registration Statement") filed on the date hereof by Heat Biologics, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission with respect to the registration of up to an aggregate of 4,000,000 shares of the Company's common stock, par value \$0.0002 per share (the "Shares"), to be issued in connection with the Company's 2018 Stock Incentive Plan (the "Plan").

In connection with rendering this opinion, we have examined or are familiar with the charter documents of the Company, the Plan, the corporate proceedings with respect to the authorization of the Registration Statement and the Plan, and such other certificates, instruments and documents as we have considered necessary or appropriate for purposes of this opinion. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, conformity to the original documents of all documents submitted to us as copies and the authenticity of the originals of such latter documents. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the Registration Statement and the aforesaid records, certificates and documents. We have made such examination as we have deemed necessary for the purpose of this opinion.

Based upon such examination, it is our opinion, that, the Shares have been duly and validly authorized and when issued against receipt of the consideration therefore in accordance with the provisions of the Plan and the Registration Statement, will be validly issued, fully paid and non-assessable.

We are members of the bar of the State of New York, and do not express any opinion herein concerning any law other than the Delaware General Corporation Law and applicable reported judicial decisions. This opinion letter has been prepared for use in connection with the Registration Statement. We assume no obligations to advise you of any change in the foregoing subsequent to the delivery of this opinion letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, and the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ Gracin & Marlow, LLP

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in this Registration Statement of our report dated March 2, 2018, relating to the consolidated financial statements of Heat Biologics, Inc. appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2017. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP

Raleigh, North Carolina
October 4, 2018