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

**Post-Effective Amendment No. 1
on FORM S-3
to FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

ImmunityBio, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

43-1979754
(I.R.S. Employer
Identification No.)

**3530 John Hopkins Court
San Diego, California 92121
(858) 633-0300**
(Address, including zip code, and telephone number, including area code, of each registrant's principal executive offices)

Richard Adcock
Chief Executive Officer and President
ImmunityBio, Inc.
3530 John Hopkins Court
San Diego, California 92121
(858) 633-0300
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Jason Liljestrom
General Counsel
ImmunityBio, Inc.
3530 John Hopkins Court
San Diego, California 92121
Tel: (858) 633-0300

Martin J. Waters
Wilson Sonsini Goodrich & Rosati,
Professional Corporation
12235 El Camino Real
San Diego, California 92130
(858) 350-2300

Approximate date of commencement of proposed sale to the public: From time to time, after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 7(a)(2)(B) of the Exchange Act.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Number of shares to be registered (1)(2)(3)
Common Stock, par value \$0.0001 per share, reserved for issuance under the Assumed Plan	1,094,377

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, (the “Securities Act”) this Registration Statement shall also cover any additional shares of common stock, par value \$0.0001 per share (the “Common Stock”) of ImmunityBio, Inc., a Delaware corporation (the “Registrant”) that become issuable under the Registrant’s NantCell 2015 Stock Incentive Plan, which was amended and restated on March 4, 2021 to be renamed the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan (the “Assumed Plan”) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Common Stock.
- (2) Represents the maximum number of shares of Common Stock issuable pursuant to stock options outstanding and held by those who are not the Registrant’s “employees” as that term is defined in Form S-8 under the Securities Act, under the Assumed Plan as of the date of this Registration Statement (the “Assumed Awards”), which were assumed by the Registrant pursuant to the Agreement and Plan of Merger dated as of December 21, 2020 by and among NantKwest, Inc. (now renamed ImmunityBio, Inc.), Nectarine Merger Sub, Inc., and ImmunityBio, Inc., a private company (“ImmunityBio Private”) (the “Merger Agreement”), multiplied by the exchange ratio in the merger of 0.8190 (the “Exchange Ratio”). Upon the closing of the transaction contemplated by the Merger Agreement on March 9, 2021, the Registrant assumed the Assumed Awards, which were automatically converted into awards in respect of shares of the Common Stock, subject to appropriate adjustments to the number of shares issuable pursuant to such Assumed Awards as provided in the Merger Agreement, and subject to the Exchange Ratio.
- (3) These shares of the Registrant’s Common Stock were registered under the Registration Statement on Form S-4 (File No. 333-252232) filed with the Securities and Exchange Commission (the “Commission”) on January 19, 2021, as amended on January 29, 2021 and declared effective by the Commission on February 1, 2021 (together, the “Registration Statement on Form S-4”). All filing fees payable in connection with the issuance of these shares were previously paid in connection with the filing of the Registration Statement on Form S-4.

EXPLANATORY NOTE

ImmunityBio, Inc., a Delaware corporation (“we,” “us,” “our,” or the “Company”), is filing this Post-Effective Amendment to Form S-4 on Form S-3 (this “Post-Effective Amendment”) to register up to 1,094,377 shares of Common Stock that may be issued to certain former employees of the Company pursuant to stock options awarded under the Assumed Plan.

Pursuant to the Merger Agreement, ImmunityBio Private, merged with and into Nectarine Merger Sub, Inc., with ImmunityBio Private, surviving as a wholly owned subsidiary of NantKwest, Inc. (the “Merger”). Following the completion of the Merger, NantKwest, Inc. was renamed ImmunityBio, Inc., and ImmunityBio Private was renamed NantCell, Inc. Pursuant to the terms of the Merger Agreement, the Company assumed all of ImmunityBio Private’s outstanding stock options under the Assumed Plan immediately prior to the effective time of the Merger, and each assumed stock option became exercisable for shares of Common Stock, with the number of shares issuable upon the exercise of such stock options and the exercise price per share adjusted by the Exchange Ratio.

This Post-Effective Amendment is being filed to register the shares of Common Stock underlying stock options held by certain former employees of ImmunityBio Private at the time of the Merger.

This Post-Effective Amendment contains the form of prospectus to be used in connection with offers and sales, including the exercise of stock options, under the Assumed Plan.

PROSPECTUS



1,094,377 SHARES OF COMMON STOCK

Issuable Under the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan

This prospectus relates to up to 1,094,377 shares of Common Stock that may be issued upon the exercise of stock options granted to certain employees of ImmunityBio Private under the Assumed Plan who are no longer service providers. Pursuant to Rule 416(a) under the Securities Act, this prospectus also covers such additional shares of Common Stock that may become available from time to time under the Assumed Plan. We will receive the exercise price if and when such stock options are exercised. We will not receive any proceeds if the stock options are exercised on a cashless basis.

Our Common Stock is listed on The Nasdaq Global Select Market ("Nasdaq") under the symbol "IBRX." On May 19, 2021, the last reported sale price of our Common Stock on Nasdaq was \$15.96 per share.

An investment in our Common Stock involves risks. See "Risk Factors" in our most recent Annual and Quarterly Reports on Form [10-K](#) and [10-Q](#), as the case may be, which are incorporated by reference in this prospectus and in any applicable prospectus supplement.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is May 21, 2021.

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PROSPECTUS SUMMARY

This prospectus relates to the offer and sale by us of shares of our Common Stock issuable upon the exercise of stock options granted under the Assumed Plan that are currently outstanding and were issued to certain former employees of ImmunityBio Private. See “Appendix A — Plan Prospectus.” This prospectus also relates to such additional shares of Common Stock as are required to prevent dilution resulting from a stock split, stock dividend or similar transaction.

FORWARD-LOOKING STATEMENTS

This prospectus may contain forward-looking statements as that term is defined in the federal securities laws. The events described in forward-looking statements contained in this prospectus may not occur. Generally, these statements relate to business plans or strategies, projected or anticipated benefits or other consequences of our plans or strategies, projected or anticipated benefits from acquisitions to be made by us, or projections involving anticipated revenues, earnings or other aspects of our operating results. The words “anticipates,” “assumes,” “believes,” “can,” “could,” “estimates,” “expects,” “forecasts,” “guides,” “intends,” “is confident that,” “may,” “plans,” “seeks,” “projects,” “targets,” and “would” and their opposites and similar expressions are intended to identify forward-looking statements. We caution you that these statements are not guarantees of future performance or events and are subject to a number of uncertainties, risks and other influences, many of which are beyond our control, that may influence the accuracy of the statements and the projections upon which the statements are based. Factors which may affect our results include, but are not limited to, the risk factors and uncertainties set forth under the heading “Risk Factors” in our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, as well as any applicable prospectus supplement.

Any one or more of these uncertainties, risks and other influences could materially affect our results of operations and whether forward-looking statements made by us ultimately prove to be accurate. Our actual results, performance and achievements could differ materially from those expressed or implied in these forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statements, whether from new information, future events or otherwise, except as required by applicable securities laws.

USE OF PROCEEDS

We will receive the exercise price of stock options under the Assumed Plan if and when such stock options are exercised. We will not receive any proceeds if the stock options are exercised on a cashless basis. We currently have no specific plans for the use of the net proceeds received upon the exercise of such stock options, but we anticipate that we will use the net proceeds for general corporate purposes, including working capital.

PLAN OF DISTRIBUTION

Outstanding stock options with respect to shares of ImmunityBio Private common stock were previously granted under the Assumed Plan to certain former employees of ImmunityBio Private and have been converted to analogous stock options with respect to shares of our Common Stock. Shares of our Common Stock are issuable pursuant to the stock options previously granted under the Assumed Plan. See “Appendix A — Plan Prospectus.”

DESCRIPTION OF CAPITAL STOCK

The Common Stock to be offered upon the exercise of stock options granted under the Assumed Plan is registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). For a description of the stock options that have been issued pursuant to the Assumed Plan, see “Appendix A — Plan Prospectus.”

LEGAL MATTERS

The validity of the securities to be offered hereby have been passed upon by Wilson Sonsini Goodrich & Rosati, Professional Corporation.

EXPERTS

The combined consolidated financial statements of ImmunityBio, Inc. for the years ended December 31, 2020 and 2019, appearing in ImmunityBio, Inc.'s Current Report on Form 8-K/A filed with the Securities and Exchange Commission on April 22, 2021, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such combined consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of NantKwest, Inc. appearing in NantKwest, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2020, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of NantCell, Inc. (fka ImmunityBio, Inc., a private company) for the years ended December 31, 2020 and 2019, appearing in ImmunityBio, Inc.'s Current Report on Form 8-K/A filed with the Securities and Exchange Commission on April 22, 2021, have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

Because we are subject to the information and reporting requirements of the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at www.sec.gov. In addition, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K, including any amendments to those reports, and other information that we file with or furnish to the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act can also be accessed free of charge through the investor relations page of our website located at ir.immunitybio.com. These filings will be available as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information contained on or accessible through our website is not a part of this prospectus and is not incorporated by reference herein, and the inclusion of our website address and the SEC website address in this prospectus are inactive textual references only. Information contained on our website is not part of this prospectus.

This prospectus and any accompanying prospectus supplement are part of a registration statement on Form S-3 that we have filed with the SEC and do not contain all the information we have included in the registration statement and the accompanying exhibits and schedules we have filed with the SEC. Statements in this prospectus or any prospectus supplement about these documents are summaries and each statement is qualified in all respects by reference to the document to which it refers. You should refer to the registration statement, exhibits and schedules for a more complete description about us and the securities. The registration statement, exhibits and schedules are available through the SEC's Internet site.

INCORPORATION BY REFERENCE

The SEC allows us to "incorporate by reference" the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus. We incorporate by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, subsequent to the date hereof and prior to the effectiveness of the registration statement and prior to the termination of the offering (excluding any disclosures that are furnished and not filed):

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, filed with the SEC on [March 4, 2021](#);
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2021, filed with the SEC on [May 14, 2021](#);
- our Current Reports on Form 8-K filed with the SEC on [January 13, 2021](#), [February 10, 2021](#), [February 24, 2021](#), [February 25, 2021](#), [March 10, 2021](#), [March 17, 2021](#), [April 1, 2021](#), [April 22, 2021](#) and [May 3, 2021](#), only to the extent that the items therein are specifically stated to be "filed" rather than "furnished" for the purposes of Section 18 of the Exchange Act;
- the description of our common stock contained in the Company's Annual Report on Form 10-K filed with the SEC on [March 25, 2020](#), pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

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All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus and prior to the termination of the offering of our securities to which this prospectus relates will automatically be deemed to be incorporated by reference into this prospectus and to be part of this prospectus from the date of the filing of such reports and documents. We are not, however, incorporating by reference any documents or portions thereof that are not deemed “filed” with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K (and any related exhibits furnished with such furnished information). Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon written or oral request, a copy of any or all documents that are incorporated by reference into this prospectus, but not delivered with the prospectus, other than exhibits to such documents unless such exhibits are specifically incorporated by reference into the documents that this prospectus incorporates. You should direct written requests to: ImmunityBio, Inc., 3530 John Hopkins Court, San Diego, California 92121, Attention: Investor Relations, or you may call us at (858) 633-0300.

APPENDIX A — PLAN PROSPECTUS

**AMENDED AND RESTATED IMMUNITYBIO, INC.
2015 STOCK INCENTIVE PLAN**

**1,094,377 SHARES OF COMMON STOCK
(Par value \$0.0001 per share)**

PLAN DESCRIPTION

Under the NantCell, Inc. 2015 Stock Incentive Plan, which was amended and restated on March 4, 2021 to be renamed the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan (the “*2015 NantCell Plan*”), then-current eligible employees, directors and consultants of NantCell, Inc., a Delaware corporation (hereinafter called the “*Company*” with such term also referring to the combined company following the Merger (as defined below)) and its affiliates, were granted shares of common stock, par value \$0.0001 per share (“*Common Stock*”), of the Company, non-qualified options and incentive stock options to purchase shares of Common Stock as set forth herein.

No person has been authorized to give any information or to make any representations other than those contained in this Prospectus and, if given or made, such information or representations must not be relied upon.

The outstanding shares of Common Stock are, and the shares offered hereby will be, listed on The Nasdaq Global Select Market under the symbol “IBRX.”

The date of this Prospectus is May 21, 2021

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**AMENDED AND RESTATED IMMUNITYBIO, INC.
2015 STOCK INCENTIVE PLAN**

SUMMARY OF AVAILABLE AWARDS

Purpose:	The purpose of the 2015 NantCell Plan was to attract and retain the best available personnel, to provide additional incentives to employees, directors and consultants (hereinafter referred to as “ Participants ”) and to promote the success of the Company’s business.
Stock Rights:	The 2015 NantCell Plan authorizes the issuance of Common Stock, restricted stock, restricted stock units (together, “ Stock Grants ”), incentive stock options (“ ISOs ”), non-qualified stock options (“ Non-Qualified Options ,” ISOs and Non-Qualified Options are hereinafter referred to as “ Options ”), dividend equivalent rights and stock appreciation rights (together, “ Other Awards ”) to employees of the Company, and the issuance of Stock Grants, Non-Qualified Options and Other Awards to employees, directors and consultants of the Company. Options, Stock Grants and Other Awards are collectively referred to herein as “ Stock Rights .”
Option Exercise Price:	<p>For Non-Qualified Options, the option price per share is determined by the Administrator (as defined below) but shall not be less than the par value per share of Common Stock as of the date of grant of such Option.</p> <p>For ISOs, the option price per share is determined by the Administrator, subject to the limitation that it be at least equal to 100% of the fair market value per share of the Common Stock on the date of grant. If, however, the Participant owns more than 10% of the total combined voting power of the Company or an affiliate, the option price per share must be at least equal 110% of the fair market value per share of the Common Stock on the date of grant.</p>
Term of Options:	The term of Non-Qualified Options is determined by the Administrator and shall be set forth in the Option Agreement (defined below) for such Option, which term shall be no more than ten years from the date of grant thereof. For ISOs, the term of the Option, like the exercise price, is dependent upon the ownership interest of the Participant in the Company or an affiliate. Generally, the term of an ISO is ten years. If the Participant owns more than 10% of the total combined voting power of the Company or an affiliate, the term of the ISO will be no more than five years. An Option is subject to early termination upon the termination of employment or other relationship of the Participant with the Company, whether such termination is at the option of the Company, the Participant, or as a result of the death or disability of the Participant.
Vesting; Exercise of Options:	<p>The ability of a Participant to exercise an Option is subject to the vesting of the Option. At the time the Option is granted, each Option Agreement shall state the vesting schedule and the date or dates on which it first is exercisable and the date after which it may no longer be exercised, and may provide that the Option rights accrue or become exercisable in installments over a period of months or years, or upon the occurrence of certain conditions or the attainment of stated goals or events.</p> <p>Typically, as the Option vests, a Participant will be able to exercise the Option with respect to the vested portion of the shares and ultimately with respect to all of the vested shares, until such time as the Option expires or terminates. An Option may be exercised by giving notice to the Company or its designee together with provision for payment of the aggregate exercise price for the number of shares as to which the Option is being exercised.</p> <p>The amount of ISOs that may be exercisable in any calendar year (under this or any other incentive stock option plan of the Company or an Affiliate) shall be limited so that the aggregate fair market value (determined on the date each ISO is granted) of shares of Common Stock with respect to which ISOs are exercisable for the first time by the Participant in any calendar year does not exceed \$100,000.</p>
Terms and Conditions of Stock Grants:	The purchase price (per share), if any, of a Stock Grant shall be determined by the Administrator but shall not be less than the minimum consideration required by the Delaware General Corporation Law on the date of the Stock Grant. A Stock Grant may be subject to forfeiture by the Participant upon termination of service to the Company, under certain circumstances. The principal terms of each Stock Grant shall be set forth in an agreement in a form approved by the Company.

REGISTRANT INFORMATION AND EMPLOYEE PLAN INFORMATION

The Company undertakes to provide without charge to each person to whom a Prospectus is delivered, upon written or oral request, a copy of any and all of the information that has been incorporated by reference in the Post-Effective Amendment on Form S-3 to Form S-4 filed by the Company with the Securities and Exchange Commission on May 21, 2021 (File No. 333-252232) (collectively, the “**Registration Statements**”) other than certain exhibits to such documents, relating to the shares covered hereby. These documents are incorporated by reference in this Section 10(a) Prospectus. In addition, the Company undertakes to provide without charge to each Participant, upon written or oral request, a copy of the documents required to be delivered pursuant to Rule 428(b) under the Securities Act of 1933, as amended (the “**Securities Act**”). Such requests, along with requests for information regarding the 2015 NantCell Plan and its administrators, should be directed to Jason Liljestrom, General Counsel, ImmunityBio, Inc., 3530 John Hopkins Court, San Diego, California 92121, 858-633-0300.

The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020, and subsequent Annual Reports to Stockholders will be made available to all Participants on the Company’s website at www.immunitybio.com. An additional copy of the prospectus or Annual Report, as applicable, will be furnished to a Participant upon request.

SUMMARY OF THE AMENDED AND RESTATED IMMUNITYBIO, INC. 2015 STOCK INCENTIVE PLAN

The statements contained herein concerning the terms and provisions of the 2015 NantCell Plan are summaries and do not purport to be complete. All such statements are qualified in their entirety by reference to the full text of the 2015 NantCell Plan. In the event of any discrepancy, the terms of the 2015 NantCell Plan shall control. A copy of the 2015 NantCell Plan is included herein as [Exhibit A](#).

Purpose

The NantCell, Inc. 2015 Stock Incentive Plan, which was amended and restated on March 4, 2021 to be renamed the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan (the “**2015 NantCell Plan**”) is intended to encourage ownership of shares of Common Stock of the Company by certain employees, directors, and consultants of the Company and its affiliates (hereinafter referred to as “**Participants**”) in order to attract and retain such people, to induce them to work for the benefit of the Company or of an affiliate and to provide additional incentive for them to promote the success of the Company or of an affiliate. The 2015 NantCell Plan provides for the granting of incentive stock options (“**ISOs**”), non-qualified stock options (“**Non-Qualified Options**,” ISOs and Non-Qualified Options are hereinafter referred to as “**Options**”), grants of shares of Common Stock, restricted stock and restricted stock units (together, “**Stock Grants**”), and dividend equivalent rights and stock appreciation rights (together, “**Other Awards**”). Options, Other Awards and Stock Grants are collectively referred to herein as, “**Stock Rights**.”

Offering

The Registration Statements cover the issuance of up to 1,094,377 shares of Common Stock, or the equivalent of such number of shares of Common Stock after the Administrator (as defined below), in its sole discretion, has interpreted the effect of any stock split, stock dividend, combination, recapitalization or similar transaction in accordance with the 2015 NantCell Plan, which may be issued pursuant to awards that were granted pursuant to the 2015 NantCell Plan, held by those who are not the Registrant’s “employees” as that term is defined in Form S-8 under the Securities Act, and outstanding as of March 9, 2021, the effective date of the Merger (described below).

General Information about the 2015 NantCell Plan

The address of the Company is 3530 John Hopkins Court, San Diego, California 92121.

The 2015 NantCell Plan was initially adopted by the Board of Directors of the Company and approved by its stockholders in 2015. The name of the Company was subsequently changed to ImmunityBio, Inc., a Delaware corporation and a private company, before the Merger (as defined below). Pursuant to an Agreement and Plan of Merger, dated as of December 21, 2020 (the “**Merger Agreement**”), by and among NantKwest, Inc. (“**NantKwest**”), the Company, and Nectarine Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of the NantKwest (“**Merger Sub**”), the Company merged with and into Merger Sub, with the Company surviving as a wholly-owned subsidiary of NantKwest (the “**Merger**”). In connection with the Merger, NantKwest was renamed ImmunityBio, Inc., and all awards granted pursuant to the 2015 NantCell Plan were assumed by the Company. Following the Merger, all outstanding awards under the 2015 NantCell Plan were assumed by the Company and are now to be settled for shares of Common Stock of the Company. After the Merger, no other awards shall be made under the 2015 NantCell Plan.

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The 2015 NantCell Plan is not subject to any provisions of the Employee Retirement Income Security Act of 1974, as amended.

The Company will bear all expenses in connection with the administration of the 2015 NantCell Plan. All funds received or held by the Company under the 2015 NantCell Plan may be used for any corporate purpose. Stock Rights granted under the 2015 NantCell Plan are subject to the terms of the 2015 NantCell Plan as in effect at the time each option grant notice (an “**Option Agreement**”) or stock grant notice (a “**Stock Grant Agreement**” and together with an Option Agreement, an “**Award Agreement**”) is entered into, except as such Option Agreement or Stock Grant Agreement may otherwise be amended by agreement of the parties or as provided in the 2015 NantCell Plan. In some circumstances, a particular Award Agreement may include terms that are authorized by the 2015 NantCell Plan but are not specifically described in the 2015 NantCell Plan. Accordingly, it is important that each Participant review his or her Option Agreement(s) and/or Stock Grant Agreement(s) for specific terms applicable to the Participant’s Stock Rights. If any Participant would like another copy of his or her Option Agreement(s) and/or Stock Grant Agreement(s), the Company will provide one upon request.

The 2015 NantCell Plan authorizes the grant to employees of the Company (including an employee who is also serving as an officer or director of the Company or of an Affiliate), who are designated to be eligible, of Options to purchase shares of Common Stock. These options are meant to qualify as ISOs under Section 422 of the Internal Revenue Code of 1986, as amended (the “**Code**”). The 2015 NantCell Plan also authorizes the grant to employees, directors and consultants of the Company or a parent or subsidiary of the Company, direct or indirect (an “**Affiliate**”) of Non-Qualified Options. Additionally, the 2015 NantCell Plan authorizes the issuance of Stock Rights to employees, directors and consultants of the Company or an Affiliate.

Administration

The administrator of the 2015 NantCell Plan (the “**Administrator**”) is the Board of Directors of the Company (the “**Board of Directors**”), except to the extent the Board of Directors delegates its authority to a committee of the Board of Directors (the “**Committee**”). Subject to the provisions of the 2015 NantCell Plan, the Administrator has the authority to:

- (a) select the employees, directors and consultants to whom Stock Rights may be granted from time to time under the 2015 NantCell Plan;
- (b) determine whether and to what extent Stock Rights are granted under the 2015 NantCell Plan;
- (c) determine the number of shares or other consideration for which a Stock Right or Stock Rights shall be granted;
- (d) approve forms of Option Agreements and Stock Grant Agreements for use under the 2015 NantCell Plan;
- (e) determine the terms and conditions of any Stock Right granted under the 2015 NantCell Plan;
- (f) establish additional terms, conditions, rules or procedures to accommodate the rules or laws of applicable non-U.S. jurisdictions and to afford grantees favorable treatment under such rules or laws; provided, however, that no Stock Rights shall be granted under any such additional terms, conditions, rules or procedures with terms or conditions which are inconsistent with the provisions of the 2015 NantCell Plan;
- (g) to amend the terms of any outstanding Award granted under the 2015 NantCell Plan, provided that any amendment that would adversely affect the grantee’s rights under an outstanding award shall not be made without the grantee’s written consent, provided, however, that an amendment or modification that may cause an Incentive Stock Option to become a Non-Qualified Stock Option shall not be treated as adversely affecting the rights of the Grantee. Notwithstanding the foregoing, (A) the reduction or increase of the exercise price of any Option awarded under the 2015 NantCell Plan and the base appreciation amount of any stock appreciation right awarded under the 2015 NantCell Plan and (B) canceling an Option or stock appreciation right at a time when its exercise price or base appreciation amount (as applicable) exceeds the fair market value of the underlying shares of Common Stock, in exchange for another Option, stock appreciation right, Restricted Stock, or other Award or for cash, in each case, shall not be subject to stockholder approval;
- (h) to construe and interpret the terms of the 2015 NantCell Plan and awards thereunder, including without limitation, any notice of award, Stock Grant Agreement or Option Agreement, granted pursuant to the 2015 NantCell Plan; and
- (i) to take such other action, not inconsistent with the terms of the 2015 NantCell Plan, as the Administrator deems appropriate.

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All interpretations, rules, determinations, terms and conditions shall be made and prescribed in the context of preserving the tax status under Section 422 of the Code of those Options which are designated as ISOs. Subject to the foregoing, the interpretation and construction by the Administrator of any provisions of the 2015 NantCell Plan or of any Stock Right granted under it shall be final, unless otherwise determined by the Board of Directors if the Administrator is the Committee. In addition, if the Administrator is the Committee, the Board of Directors may take any action under the 2015 NantCell Plan that would otherwise be the responsibility of the Committee.

If permissible under applicable law, the Board of Directors or the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any portion of its responsibilities and powers to any other person selected by it. Any such allocation or delegation may be revoked by the Board of Directors or the Committee at any time.

Eligibility

The Administrator, in its sole discretion, selected the Participants in the 2015 NantCell Plan. ISOs were granted only to employees of the Company or an Affiliate. Non-Qualified Options and Stock Grants were granted to employees, directors and consultants of the Company or an Affiliate. The granting of any Stock Right to any individual neither entitles that individual to, nor disqualifies him or her from, participation in any other grant of Stock Rights or any grant under any other benefit plan established by the Company or any Affiliate for employees, directors or consultants.

Employment or Other Relationship

Nothing in the 2015 NantCell Plan or any award agreement shall be deemed to prevent the Company or an Affiliate from terminating the employment, consultancy or director status of a Participant, nor to prevent a Participant from terminating his or her own employment, consultancy or director status or to give any Participant a right to be retained in employment or other service by the Company or any Affiliate for any period of time.

Terms and Conditions of Options

Each Option shall be set forth in writing in an Option Agreement, duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. Option Agreements shall conform to the minimum conditions set forth in the 2015 NantCell Plan and may contain such other provisions as the Administrator deems advisable that are not inconsistent with the 2015 NantCell Plan.

A. Non-Qualified Options: Non-Qualified Options may be granted to employees, directors and consultants of the Company or of an Affiliate, subject to the minimum standard for any such Non-Qualified Option that the option price per share of the shares covered by each Non-Qualified Option shall be determined by the Administrator but shall not be less than the par value per share of Common Stock on the date of grant of such Option. Each Option Agreement shall state the date or dates on which it first is exercisable and the date after which it may no longer be exercised, and may provide that the Option rights vest or become exercisable in installments over a period of months or years, or upon the occurrence of certain conditions or the attainment of stated goals or events.

B. ISOs: ISOs may be granted only to employees and are subject to at least the following terms and conditions, with such additional restrictions or changes as the Administrator determines are appropriate but not in conflict with Section 422 of the Code and relevant regulations and rulings of the Internal Revenue Service:

1. Option Price. The option price per share is dependent upon the ownership interest of the Participant in the Company or an Affiliate immediately before the ISO is granted. Immediately before the ISO is granted, if the Participant owns, directly or by reason of the applicable attribution rules in Section 424(d) of the Code:

- (a) 10% or less of the total combined voting power of all classes of stock of the Company or an Affiliate, the option price per share of the shares of Common Stock covered by each ISO shall not be less than 100% of the fair market value per share of the Common Stock on the date of the grant of the ISO; or

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- (b) More than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, the option price per share of Common Stock of the shares covered by each ISO shall not be less than 110% of the fair market value per share of the Common Stock on the date of the grant of the ISO.

2. Term of Option. The term of an ISO also is dependent upon the ownership interest of the Participant in the Company or an Affiliate immediately before the ISO is granted. For Participants who own:

- (a) 10% or less of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than ten years from the date of grant or at such earlier time as the Option Agreement may provide; or
- (b) More than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, each ISO shall terminate not more than five years from the date of the grant or at such earlier time as the Option Agreement may provide.

3. Limitation on Yearly Exercise: The Option Agreements shall restrict the amount of ISOs that may be exercisable in any calendar year (under this or any other incentive stock option plan of the Company or an Affiliate) so that the aggregate fair market value (determined at the time each ISO is granted) of shares of Common Stock with respect to which ISOs are exercisable for the first time by the Participant in any calendar year does not exceed \$100,000.

C. Fair Market Value: For purposes of the 2015 NantCell Plan, the “fair market value” of a share of Common Stock means:

1. If the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market of The NASDAQ Stock Market LLC, its fair market value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on the principal exchange or system on which the Common Stock is listed (as determined by the Administrator) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;
2. If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its fair market value shall be the closing sales price for such stock as quoted on such system or by such securities dealer on the date of determination, but if selling prices are not reported, the fair market value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or
3. In the absence of an established market for the Common Stock of the type described in the two immediately preceding paragraphs, the fair market value thereof shall be determined by the Administrator in good faith and in a manner consistent with applicable laws.

Terms and Conditions of Stock Grants

The principal terms of each Stock Grant shall be set forth in writing in a Stock Grant Agreement, duly executed by the Company and, to the extent required by law or requested by the Company, by the Participant. Stock Grant Agreements shall conform to the minimum conditions set forth in the 2015 NantCell Plan and may contain such other provisions as the Administrator deems advisable that are not inconsistent with the 2015 NantCell Plan.

Exercise of Options and Issuance of Shares

An Option (or any part or installment thereof) may be exercised by giving written notice to the Company or its designee, together with provision for payment of the full option price for the shares of Common Stock as to which such Option is being exercised, and upon compliance with any other condition(s) set forth in the applicable Option Agreement. Such written notice shall be signed by the person exercising the Option, shall state the number of shares

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of Common Stock with respect to which the Option is being exercised and shall contain any representation required by the 2015 NantCell Plan or the Option Agreement. Payment of the option price for the shares of Common Stock as to which such Option is being exercised shall be made (a) in United States dollars in cash or by check, (b) at the discretion of the Administrator, through delivery of shares of Common Stock having a fair market value equal as of the date of the exercise to the cash option price and held for the requisite time period, (c) at the discretion of the Administrator, by delivery of the Participant's promissory note with such recourse, interest, security, and redemption provisions as the Administrator determines as appropriate (but only to the extent that the acceptance or terms of the promissory note would not violate an applicable law); (d) at the discretion of the Administrator, by surrender of shares of Common Stock 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 of Common Stock as to which said award shall be exercised, (e) if the exercise occurs on or after the date of sale through a registered public offering of the Company's (or any successor's through a corporate transaction) securities, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (A) shall provide written instructions to a Company designated brokerage firm to effect the immediate sale of some or all of the purchased shares of Common Stock and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares, (f) payment through a "net exercise" such that, without the payment of any funds, the grantee may exercise the Option and receive the net number of shares of Common Stock equal to (i) the number of shares of Common Stock as to which the Option is being exercised, multiplied by (ii) 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 of Common Stock (the number of net shares of Common Stock to be received shall be rounded down to the nearest whole number); or (g) at the discretion of the Administrator, by any combination of (a) through (f) above. Notwithstanding the foregoing, the Administrator shall accept only such payment on exercise of an ISO as is permitted by Section 422 of the Code.

The Company shall then promptly deliver to the Participant (or to a deceased Participant's legal representative and/or any person or persons who acquired the Participant's rights to a Stock Right by will or by the laws of descent and distribution (the "**Participant's Survivors**"), as the case may be) the shares of Common Stock as to which such Option was exercised. In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the shares of Common Stock may be delayed by the Company in order to comply with any law or regulation (including, without limitation, state securities or "blue sky" laws) which requires the Company to take any action with respect to the shares of Common Stock prior to their issuance. The shares shall, upon delivery, be fully paid, non-assessable shares of Common Stock.

The Administrator shall have the right to accelerate the date of exercise of any installment of any Option; provided, however, that the Administrator may not accelerate the exercise date of any installment of any ISO (which ISO has not previously converted into a Non-Qualified Option under the 2015 NantCell Plan; See "Conversion of ISOs into Non-Qualified Options") without the prior approval of the Participant if such acceleration would violate the annual vesting limitation contained in Section 422(d) of the Code. See the following Section: "Terms and Conditions of Options – ISOs."

The Administrator may, in its discretion, amend any term or condition of an outstanding Option provided (i) such term or condition as amended is permitted by the 2015 NantCell Plan, (ii) any such amendment shall be made only with the consent of the Participant to whom the Option was granted, or in the event of the death of the Participant, the Participant's Survivors, if the amendment is adverse to the Participant, and (iii) any such amendment of any Option shall be made only after the Administrator determines whether such amendment would constitute a "modification" of any Option which is an ISO (as that term is defined in Section 424(h) of the Code) or would cause any adverse tax consequences for the holder of such ISO.

Issuance of Stock Grants and Issuance of Shares

A Stock Grant (or any part or installment thereof) shall be accepted by the Participant's executing the applicable Stock Grant Agreement and delivering it to the Company or its designee, together with provision for payment of the purchase price, if any, in accordance with this paragraph for the shares of Common Stock as to which such Stock Grant is being accepted, and upon compliance with any other conditions set forth in the applicable Stock Grant

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Agreement. Payment of the purchase price for the shares as to which such Stock Grant is being accepted shall be made (a) in United States dollars in cash or by check, (b) at the discretion of the Administrator, by delivery of the Participant's promissory note with such recourse, interest, security, and redemption provisions as the Administrator determines as appropriate (but only to the extent that the acceptance or terms of the promissory note would not violate an applicable law); (c) at the discretion of the Administrator, by surrender of shares of Common Stock 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 of Common Stock as to which said award shall be exercised, or (d) at the discretion of the Administrator, by any combination of (a), (b) and (c) above.

The Company shall then promptly deliver the shares of Common Stock as to which such Stock Grant was accepted to the Participant (or to the Participant's Survivors, as the case may be), subject to any escrow provision set forth in the Stock Grant Agreement. In determining what constitutes "reasonably promptly," it is expressly understood that the issuance and delivery of the shares may be delayed by the Company in order to comply with any law or regulation (including, without limitation, state securities or "blue sky" laws) which requires the Company to take any action with respect to the shares of Common Stock prior to their issuance.

The Administrator may, in its discretion, amend any term or condition of an outstanding Stock Grant or Stock Grant Agreement provided (i) such term or condition as amended is permitted by the 2015 NantCell Plan, and (ii) any such amendment shall be made only with the consent of the Participant to whom the Stock Grant was made, if the amendment is adverse to the Participant.

Forfeiture and Penalties; Restrictions on Resale

Awards granted pursuant to the 2015 NantCell Plan may contain restrictions on sale or transfers and may be subject to a risk of forfeiture. The Administrator may impose on any award at the time of grant, such additional terms and conditions as the Administrator determines, including terms restricting sale or transfers or requiring forfeiture of awards in the event of a Participant's termination of service.

For restrictions on resale by "affiliates" of the Company within the meaning of the Securities Act, see "Federal Securities Laws Considerations."

Rights as a Stockholder

No Participant to whom a Stock Right has been granted shall have rights as a stockholder of the Company with respect to any shares of Common Stock covered by such Stock Right, except after due exercise of the Option or acceptance of the Stock Grant or as set forth in any award agreement, and tender of the aggregate exercise or purchase price, if any, for the shares being purchased pursuant to such exercise or acceptance and registration of the shares in the Company's share register in the name of the Participant.

Assignability and Transferability of Stock Rights

By its terms, a Stock Right granted to a Participant shall not be transferable by the Participant other than (i) by will or by the laws of descent and distribution or (ii) as approved by the Administrator and set forth in the applicable Option or Stock Grant Agreement. Notwithstanding the foregoing, an ISO transferred except in compliance with clause (i) above shall no longer qualify as an ISO. The designation of a beneficiary of a Stock Right by a Participant, with the prior approval of the Administrator and in such form as the Administrator shall prescribe, shall not be deemed a transfer prohibited by this paragraph. Except as provided above, a Stock Right shall only be exercisable or may only be accepted, during the Participant's lifetime, by such Participant (or by his or her legal representative) and shall not be assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to execution, attachment or similar process. Any attempted transfer, assignment, pledge, hypothecation or other disposition of any Stock Right or of any rights granted thereunder contrary to the provisions of the 2015 NantCell Plan, or the levy of any attachment or similar process upon a Stock Right, shall be null and void.

Termination of Options

A. Effect on Options of Termination of Service by Employees, Directors and Consultants Other than for Cause, or as a Result of Death or Disability.

Except as otherwise provided in a Participant's Option Agreement, in the event of a termination of service as an employee, director or consultant with the Company or an Affiliate before the Participant has exercised an Option, the following rules apply:

1. A Participant who ceases to be an employee, director or consultant of the Company or of an Affiliate (for any reason other than termination for Cause (as defined in the 2015 NantCell Plan and set forth below), or as a result of Disability (as defined in the 2015 NantCell Plan), or death) may exercise any Option granted to him or her to the extent that the Option is exercisable on the date of such termination of service, in accordance with a Participant's Option Agreement, provided, that, in no event may an Option intended to be an ISO, be exercised later than three months after the Participant's termination of employment, unless modified by the Administrator.
2. In the case of a Participant's Disability, the Disabled Participant may exercise the Option within a period of one year after the date of the Participant's termination, but in no event after the date of expiration of the term of the Option.
3. In the case of a Participant's death (including death within the three months period after the termination of employment), the Participant's Survivors may exercise the Option within a period of one year after the date of the Participant's death, but in no event after the date of expiration of the term of the Option.
4. A Participant to whom an Option has been granted under the 2015 NantCell Plan who is absent from the Company or an Affiliate because of a temporary disability (any disability other than a Disability as defined in the 2015 NantCell Plan and set forth below), or who is on leave of absence for any purpose, shall not, during the period of any such absence, be deemed, by virtue of such absence alone, to have terminated such Participant's employment, director status or consultancy with the Company or with an Affiliate, except as the Administrator may otherwise expressly provide.

B. Effect on Options of Termination of Service by Employees, Directors and Consultants for Cause. Except as otherwise provided in a Participant's Option Agreement, the following rules apply if the Participant's service as an employee, director or consultant with the Company or an Affiliate is terminated for Cause prior to the time that all of his or her outstanding Options have been exercised:

1. All outstanding and unexercised Options as of the time the Participant is notified that his or her service is terminated for Cause will immediately be forfeited.
2. "**Cause**" means, with respect to the termination by the Company or a related entity of the grantee's Continuous Service, that such termination is for "Cause" as such term (or word of like import) is expressly defined in a then-effective written agreement between the grantee and the Company or such related entity, or in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator, the grantee's: (i) performance of any act or failure to perform any act in bad faith and to the detriment of the Company or a related entity; (ii) dishonesty, intentional misconduct or material breach of any agreement with the Company or a related entity; or (iii) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; provided, however, that with regard to any agreement that defines "Cause" on the occurrence of or in connection with a corporate transaction or a change in control, such definition of "Cause" shall not apply until a corporate transaction or a change in control actually occurs. The determination of the Administrator as to the existence of Cause will be conclusive on the Participant and the Company.
3. Cause is not limited to events that have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service but prior to the exercise of an Option, that either prior or subsequent to the Participant's termination the Participant engaged in conduct that would constitute Cause, then the right to exercise any Option is forfeited.

Termination of Stock Grants

In the event of a termination of service (whether as an employee, director or consultant) with the Company or an Affiliate for any reason before the Participant has accepted a Stock Grant, such offer shall terminate.

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A. Effect on Stock Grants of Termination of Service by Employees, Directors and Consultants Other than for Cause or as a Result of Death or Disability. Except as otherwise provided in a Participant's Stock Grant Agreement, in the event of a termination of service (whether as an employee, director or consultant), other than termination for Cause (as defined in the 2015 NantCell Plan and set forth above), or as a result of Disability (as defined in the 2015 NantCell Plan), or death, before all Company's rights of repurchase shall have lapsed, then the Company shall have the right to repurchase that number of shares of Common Stock subject to a Stock Grant as to which the Company's repurchase rights have not lapsed.

B. Effect on Stock Grants of Termination of Service by Employees, Directors and Consultants for Cause. Except as otherwise provided in a Participant's Stock Grant Agreement, if the Participant's service (whether as an employee, director or consultant) with the Company or an Affiliate is terminated for Cause:

1. All shares subject to any Stock Grant shall be immediately subject to repurchase by the Company.
2. Cause is not limited to events which have occurred prior to a Participant's termination of service, nor is it necessary that the Administrator's finding of Cause occur prior to termination. If the Administrator determines, subsequent to a Participant's termination of service, that either prior or subsequent to the Participant's termination the Participant engaged in conduct which would constitute Cause, then the Company's right to repurchase all of such Participant's Shares shall apply.

Dissolution or Liquidation of the Company

Upon the dissolution or liquidation of the Company, all Options granted under the 2015 NantCell Plan which as of such date shall not have been exercised and all Stock Grants which have not been accepted will terminate and become null and void; provided, however, that if the rights of a Participant or a Participant's Survivors have not otherwise terminated and expired, the Participant or the Participant's Survivors will have the right immediately prior to such dissolution or liquidation to exercise or accept any Stock Right to the extent that the Stock Right is exercisable or subject to acceptance as of the date immediately prior to such dissolution or liquidation.

Adjustments

Upon the occurrence of any of the following events, subject to any required action by the stockholders of the Company, and unless otherwise specifically provided in a Participant's Option Agreement or Stock Grant Agreement, a Participant's rights with respect to any Stock Right granted to him or her under the 2015 NantCell Plan shall or may be adjusted as set forth below.

A. Adjustments Upon Changes in Capitalization. If (i) any increase or decrease in the number of issued Stock Rights resulting from a stock split, reverse stock split, stock dividend, recapitalization, combination or reclassification of the Shares, or similar transaction affecting the Shares; (ii) any other increase or decrease in the number of issued Stock Rights effected without receipt of consideration by the Company; or (iii) any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction, the Shares shall be proportionately adjusted among the holders thereof; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." The share limitations within the 2015 NantCell Plan shall also be proportionately adjusted upon the occurrence of such events.

B. Corporate Transactions. If the Company is to be consolidated with or acquired by another entity in a merger in which it is not the surviving entity, sell of all or substantially all of the Company's assets, completely liquidate or dissolve, or execute a reverse merger, among other events, such event is referred to herein as a "**Corporate Transaction**". Effective upon the consummation of a Corporate Transaction, all outstanding Stock Rights under the 2015 NantCell Plan shall terminate. The Administrator shall have the authority to replace any Stock Rights that remains outstanding in connection with a Corporate Transaction. However, all such Stock Rights shall not terminate to the extent they are assumed in connection with the Corporate Transaction.

The Administrator shall have the authority, exercisable either in advance of any actual or anticipated Corporate Transaction or change in control or at the time of an actual Corporate Transaction or change in control and exercisable at the time of the grant of a Stock Right under the 2015 NantCell Plan or any time while a Stock Right remains outstanding, to provide for the full or partial automatic vesting and exercisability of one or more

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outstanding unvested Stock Rights under the 2015 NantCell Plan and the release from restrictions on transfer and repurchase or forfeiture rights of such Stock Rights in connection with a Corporate Transaction or change in control, on such terms and conditions as the Administrator may specify. The Administrator also shall have the authority to condition any such Stock Rights vesting and exercisability or release from such limitations upon the subsequent termination of the continuous service of the Participant within a specified period following the effective date of the Corporate Transaction or change in control. The Administrator may provide that any Stock Rights so vested or released from such limitations in connection with a Change in Control, shall remain fully exercisable until the expiration or sooner termination of the Stock Right.

Any ISO accelerated in connection with a Corporate Transaction or change in control shall remain exercisable as an ISO under the Code only to the extent the \$100,000 dollar limitation of Section 422(d) of the Code is not exceeded.

C. Recapitalization or Reorganization. In the event of a recapitalization or reorganization of the Company (other than a Corporate Transaction) pursuant to which securities of the Company or of another corporation are issued with respect to the outstanding shares of Common Stock, a Participant upon exercising an Option or accepting a Stock Right after the recapitalization or reorganization shall be entitled to receive for the price paid upon such exercise or acceptance the number of replacement securities which would have been received if such Stock Right had been exercised or accepted prior to such recapitalization or reorganization.

D. Modification of ISOs. Notwithstanding the foregoing, any adjustments made pursuant to subparagraphs A, B and C above with respect to ISOs shall be made only after the Administrator determines whether such adjustments would (i) constitute a “modification” of any ISOs (as that term is defined in Section 424(h) of the Code) or (ii) would cause any adverse tax consequences for the holders of such ISOs. If the Administrator determines that such adjustments made with respect to ISOs would constitute a modification of such ISOs, it may refrain from making such adjustments, unless the holder of an ISO specifically requests in writing that such adjustment be made and such writing indicates that the holder has full knowledge of the consequences of such “modification” on his or her income tax treatment with respect to the ISO.

Conversion of ISOs into Non-Qualified Options

The Administrator, at the written request of any Participant, may in its discretion take such actions as may be necessary to convert such Participant’s ISOs (or any portions thereof) that have not been exercised on the date of conversion into Non-Qualified Options at any time prior to the expiration of such ISOs, regardless of whether the Participant is an employee of the Company or an Affiliate at the time of such conversion. At the time of such conversion, the Administrator (with the consent of the Participant) may impose such conditions on the exercise of the resulting Non-Qualified Options as the Administrator in its discretion may determine, provided that such conditions shall not be inconsistent with the 2015 NantCell Plan. Nothing in the 2015 NantCell Plan shall be deemed to give any Participant the right to have such Participant’s ISOs converted into Non-Qualified Options, and no such conversion shall occur until and unless the Administrator takes appropriate action. The Administrator, with the consent of the Participant, may also terminate any portion of any ISO that has not been exercised at the time of such conversion.

Additionally, any Participant’s ISOs shall automatically be converted to Non-Qualified Options on the day three (3) months and one day following: (i) the date any Participant’s status changes from Employee to Consultant (each as defined in the 2015 NantCell Plan), or (ii) the date any Participant’s Continuous Service (as defined in the 2015 NantCell Plan) is terminated as a result of his or her Disability, if such Disability is not a “disability” under Section 22(e)(3) of the Code.

Amendment of the 2015 NantCell Plan and Award Agreements

The 2015 NantCell Plan may be amended by the Administrator, including, without limitation, to the extent necessary to qualify any or all outstanding Stock Rights granted under the 2015 NantCell Plan or Stock Rights to be granted under the 2015 NantCell Plan for favorable federal income tax treatment as may be afforded incentive stock options under Section 422 of the Code. Any amendment approved by the Administrator which the Administrator determines is of a scope that requires stockholder approval shall be subject to obtaining such stockholder approval.

Any modification or amendment of the 2015 NantCell Plan shall not, without the consent of a Participant, adversely affect his or her rights under a Stock Right previously granted to him or her. With the consent of the Participant affected, the Administrator may amend outstanding award agreements in a manner which may be adverse to the Participant but which is not inconsistent with the 2015 NantCell Plan. In the discretion of the Administrator, outstanding Award Agreements may be amended by the Administrator in a manner which is not adverse to the Participant.

INCOME TAX CONSEQUENCES

The following is a brief summary of certain U.S. federal income tax consequences relating to the transactions described under the 2015 NantCell Plan as set forth below. This summary does not purport to address all aspects of U.S. federal income taxation and does not describe state, local, or foreign tax consequences. This discussion is based upon provisions of the Code and the treasury regulations issued thereunder, and judicial and administrative interpretations under the Code and treasury regulations, all as in effect as of the date hereof, and all of which are subject to change (possibly on a retroactive basis) or different interpretation.

Incentive Stock Options

Options designated as ISOs are intended to qualify as “incentive stock options” under Section 422 of the Code.

An ISO does not result in taxable income to the employee or deduction to the Company at the time it is granted or exercised. However, the difference between the fair market value of the shares on the date of exercise and the exercise price will be an item of tax preference includable in “alternative minimum taxable income.” The rules applicable to the disposition of shares acquired upon exercise of an ISO vary depending upon whether or not the disposition constitutes a “Disqualifying Disposition.” Each employee who receives an ISO must agree to notify the Company in writing immediately after the employee makes a Disqualifying Disposition. A Disqualifying Disposition is defined in Section 424(c) of the Code and includes any disposition (including any sale or gift) of such shares before the later of (a) two years after the date the employee was granted the ISO, or (b) one year after the date the employee acquired the shares by exercising the ISO. If the employee dies before such shares are sold, these holding period requirements do not apply and no Disqualifying Disposition can occur thereafter.

If the employee makes a Disqualifying Disposition, he or she would be deemed to receive compensation taxable as ordinary income in an amount equal to the excess of the value of the stock on the date of exercise of the ISO over the exercise price of the ISO, regardless of whether the proceeds of the disposition exceed the exercise price. In such a case the employee’s cost basis for the stock would be correspondingly increased by the amount recognized as compensation by the employee. The employee’s capital gain or loss on the sale would be the difference between his or her basis so adjusted and the proceeds of the sale. Shares must have been held for more than one year in order to be treated as long-term capital gain or loss for purposes of the maximum capital gains rate.

If the employee should sell his or her stock and the sale is not a Disqualifying Disposition, the employee’s initial basis for determining taxable gain or loss will be the exercise price paid for the shares, and any gain or loss from such sale of the shares will be long-term capital gain or loss.

Non-Qualified Options

Options otherwise qualifying as ISOs, to the extent the aggregate fair market value of shares with respect to which such Options are first exercisable by an individual in any calendar year exceeds \$100,000, and Options designated as Non-Qualified Options will be treated as Options that are not incentive stock options.

A Non-Qualified Option ordinarily will not result in income to the Participant or a deduction to the Company at the time of grant. The Participant will recognize compensation income at the time of exercise of such Non-Qualified Option in an amount equal to the excess of the then value of the shares over the exercise price of the Non-Qualified Option. Such compensation income of Participants may be subject to withholding taxes, and a deduction may then be allowable to the Company in an amount equal to the Participant’s compensation income.

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A Participant's initial basis in shares so acquired will be the amount paid on exercise of the Non-Qualified Option plus the amount of any corresponding compensation income. Any gain or loss as a result of a subsequent disposition of the shares so acquired will be capital gain or loss.

Stock Grants

With respect to Stock Grants under the 2015 NantCell Plan that result in the issuance of shares that are either not restricted as to transferability or not subject to a substantial risk of forfeiture, the Participant must generally recognize ordinary income equal to the fair market value of shares received. Thus, deferral of the time of issuance will generally result in the deferral of the time the Participant will be liable for income taxes with respect to such issuance. The Company generally will be entitled to a deduction in an amount equal to the ordinary income recognized by the Participant.

With respect to Stock Grants involving the issuance of shares that are restricted as to transferability and subject to a substantial risk of forfeiture, the Participant must generally recognize ordinary income equal to the fair market value of the shares received at the first time the shares become transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier. A Participant may make an election under Section 83(b) of the Code to be taxed at the time of receipt of shares rather than upon lapse of restrictions on transferability or substantial risk of forfeiture, but if the Participant subsequently forfeits such shares, the Participant would not be entitled to any tax deduction, including as a capital loss, for the value of the shares on which he or she previously paid tax. The Participant must file such election with the Internal Revenue Service within 30 days of the receipt of the shares. If a participant does not make an election under Section 83(b) of the Code, then the participant will recognize as ordinary income any dividends received with respect to such shares. At the time of the sale of such shares, any gain or loss realized by the Participant will be treated as either short-term or long-term capital gain (or loss) depending on the holding period. For purposes of determining any gain or loss realized, the participant's tax basis will be the amount previously taxable as ordinary income, plus the purchase price paid by the participant, if any, for such shares. The Company generally will be entitled to a deduction in an amount equal to the ordinary income recognized by the Participant.

Withholding

In the event that any federal, state, or local income taxes, employment taxes, Federal Insurance Contributions Act withholdings or other amounts are required by applicable law or governmental regulation to be withheld from the Participant's salary, wages or other remuneration in connection with the exercise or acceptance of a Stock Right or in connection with a "disqualifying disposition" or upon the lapsing of any right of repurchase, the Company may withhold from the Participant's compensation, if any, or may require that the Participant advance in cash to the Company, or to any Affiliate of the Company which employs or employed the Participant, the statutory minimum amount of such withholdings unless a different withholding arrangement, including the use of shares of the Company's Common Stock or a promissory note, is authorized by the Administrator (and permitted by law).

Withholding does not represent an increase in the Participant's total income tax obligation, since it is fully credited toward his or her tax liability for the year. Additionally, withholding does not affect the Participant's tax basis in the shares of Common Stock. Compensation income realized and tax withheld will be reflected on Forms W-2 supplied by the Company to employees by January 31 of the succeeding year. Deferred compensation that is subject to Section 409A of the Code will be subject to certain federal income tax withholding and reporting requirements.

Section 409A

In 2004, Section 409A was added to the Code to regulate all types of deferred compensation. If the requirements of Section 409A of the Code are not satisfied, deferred compensation and earnings thereon will be subject to tax as it vests, plus an interest charge at the underpayment rate plus 1% and a 20% penalty tax. Certain Options and Stock Grants are subject to Section 409A of the Code.

If a Participant is a "specified employee" as defined in Section 409A of the Code (and as applied according to procedures of the Company and its Affiliates) as of his or her separation from service, to the extent any payment under the 2015 NantCell Plan constitutes deferred compensation (after taking into account any applicable

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exemptions from Section 409A of the Code), and to the extent required by Section 409A of the Code, no payments due under the 2015 NantCell Plan may be made until the earlier of: (i) the first day of the seventh month following the Participant's separation from service, or (ii) the Participant's date of death; provided, however, that any payments delayed during this six-month period shall be paid in the aggregate in a lump sum, without interest, on the first day of the seventh month following the Participant's separation from service.

The Administrator shall administer the 2015 NantCell Plan with a view toward ensuring that Stock Rights under the 2015 NantCell Plan that are subject to Section 409A of the Code comply with the requirements thereof and that Options under the 2015 NantCell Plan be exempt from the requirements of Section 409A of the Code, but neither the Administrator nor any member of the Board of Directors, nor the Company nor any of its Affiliates, nor any other person acting hereunder on behalf of the Company, the Administrator or the Board of Directors shall be liable to a Participant or any Participant's Survivor by reason of the acceleration of any income, or the imposition of any additional tax or penalty, with respect to a Stock Right, whether by reason of a failure to satisfy the requirements of Section 409A of the Code or otherwise.

Tax Consequences to the Company

To the extent that a Participant recognizes ordinary income in the circumstances described above, the Company will be entitled to a corresponding deduction provided that, among other things, the income meets the test of reasonableness, is an ordinary and necessary business expense, is not an "excess parachute payment" within the meaning of Section 280G of the Code, and is not disallowed by the \$1,000,000 limitation on certain executive compensation under Section 162(m) of the Code.

Deduction Limits and Other Tax Matters

As a general matter, a publicly-traded corporation may not deduct compensation of more than \$1,000,000 that is paid to an individual employed by the corporation who, on the last day of the taxable year, either is the corporation's principal executive officer or an individual who is among the three highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer). However, the limitation on deductions does not apply to certain types of compensation, including certain remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held, provided that certain requirements are met. All awards granted pursuant to the 2015 NantCell Plan were granted by NantCell prior to the Merger and it becoming a subsidiary of a publicly traded corporation. The Company believes that all outstanding awards under the 2015 NantCell Plan fall within this exception to the limitation on deductions.

If an individual's rights under the 2015 NantCell Plan are accelerated as a result of a change in control and the individual is a "disqualified individual" under Section 280G of the Code, the value of any such accelerated rights received by such individual may be included in determining whether or not such individual has received an "excess parachute payment" under Section 280G of the Code, which could result in (i) the imposition of a 20% federal excise tax (in addition to federal income tax) payable by the individual on the value of such accelerated rights, and (ii) the loss by the Company of a compensation deduction.

Importance of Stock Rights Participant Consulting His or Her Own Tax Advisor

The foregoing is only a brief summary of the applicable federal income tax laws and should not be relied upon as being a complete statement. While the principal provisions affecting Stock Rights are noted above, it is impossible to provide a comprehensive overview herein concerning the ultimate impact on any particular individual. The tax laws are complex and are subject to legislative changes and new or revised judicial or administrative interpretations. Moreover, the grant of Stock Rights or the receipt of shares of Common Stock under the 2015 NantCell Plan may also have state and local tax consequences. Therefore, it is urged that a Stock Rights Participant, prior to the exercise of his or her Option, or acceptance of his or her Stock Grant or Other Award, and prior to disposing of the shares acquired consult with his or her tax advisor as to the tax consequences of such an exercise or acceptance and disposition, and review with his or her tax advisor from time to time the tax status of Stock Rights and shares acquired under the 2015 NantCell Plan.

FEDERAL SECURITIES LAWS CONSIDERATIONS

Provided there is an effective registration statement, which is not the subject of any stop order, registering the issuance of shares under the 2015 NantCell Plan, shares of Common Stock received upon exercise or acceptance of Stock Rights granted under the 2015 NantCell Plan may be resold freely, except if the Participant is deemed to be an “affiliate” of the Company within the meaning of the Securities Act and the rules and regulations thereunder. Generally, for these purposes, an employee or consultant who is not an officer or director of the Company would not be an affiliate of the Company and would not be subject to any applicable limitations on sales by affiliates.

If a Participant is deemed to be an “affiliate” of the Company, such Participant may sell shares acquired upon exercise or acceptance of a Stock Right only if either such shares have been registered by the Company under the Securities Act by the filing and effectiveness of a registration statement on an available form covering the resale of such shares by such Participant, or an exemption from registration under the Securities Act is available. Rule 144, which contains limitations on the number of shares that may be sold and the selling prices thereof, is such an exemption. The Company does not intend to register for reoffer or resale the shares acquired by affiliates under the 2015 NantCell Plan, and therefore affiliates will need to rely on Rule 144 or another exemption, if available, for such reoffer or resale.

Please note that both the federal securities laws and Company policy prohibit transactions in Company stock at a time when the employee, director or consultant may be in possession of material information about the Company that has not been publicly disclosed. This also applies to members of a Participant’s household as well as all others whose transactions may be attributable to the Participant.

Material information, in short, is any information which could affect the stock price. Either positive or negative information may be material. Once a public announcement has been made by the Company, a Participant should wait until the information has been adequately disseminated to the public before trading in the Company’s stock. Generally, information regarding relatively simple matters, such as earnings results, will be deemed to have been adequately absorbed by the marketplace by the second business day after the Company’s release of such information.

For more complex matters, such as a prospective major acquisition, it may be necessary to allow additional time for the information to be digested by the investors. Under such circumstances before trading, you should consult with Jason Liljestrom, the Company’s General Counsel.

EXHIBIT A

**AMENDED AND RESTATED IMMUNITYBIO, INC.
2015 STOCK INCENTIVE PLAN**

(as amended and restated effective March 4, 2021)

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel, to provide additional incentives to Employees, Directors and Consultants and to promote the success of the Company's business.
2. Definitions. The following definitions shall apply as used herein and in the individual Award Agreements except as defined otherwise in an individual Award Agreement. In the event a term is separately defined in an individual Award Agreement, such definition shall supersede the definition contained in this Section 2.
 - (a) "Administrator" means the Board or any of the Committees appointed to administer the Plan. Board of Directors means the Board of Directors of the Company.
 - (b) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act.
 - (c) "Applicable Laws" means the legal requirements relating to the Plan and the Awards under applicable provisions of federal and state securities laws, the corporate laws of California and, to the extent other than California, the corporate law of the state of the Company's incorporation, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to Awards granted to residents therein.
 - (d) "Assumed" means that pursuant to a Corporate Transaction either (i) the Award is expressly affirmed by the Company or (ii) the contractual obligations represented by the Award are expressly assumed (and not simply by operation of law) by the successor entity or its Parent in connection with the Corporate Transaction with appropriate adjustments to the number and type of securities of the successor entity or its Parent subject to the Award and the exercise or purchase price thereof which at least preserves the compensation element of the Award existing at the time of the Corporate Transaction as determined in accordance with the instruments evidencing the agreement to assume the Award.
 - (e) "Award" means the grant of an Option, SAR, Dividend Equivalent Right, Restricted Stock, Restricted Stock Unit or other right or benefit under the Plan.
 - (f) "Award Agreement" means the written agreement evidencing the grant of an Award executed by the Company and the Grantee, including any amendments thereto.
 - (g) "Board" means the Board of Directors of the Company.
 - (h) "Cause" means, with respect to the termination by the Company or a Related Entity of the Grantee's Continuous Service, that such termination is for "Cause" as such term (or word of like import) is expressly defined in a then-effective written agreement between the Grantee and the Company or such Related Entity, or in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator, the Grantee's: (i) performance of any act or failure to perform any act in bad faith and to the detriment of the Company or a Related Entity; (ii) dishonesty, intentional misconduct or material breach of any agreement with the Company or a Related Entity; or (iii) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; provided, however, that with regard to any agreement that defines "Cause" on the occurrence of or in connection with a Corporate Transaction or a Change in Control, such definition of "Cause" shall not apply until a Corporate Transaction or a Change in Control actually occurs.
 - (i) "Change in Control" means a change in ownership or control of the Company after the Registration Date effected through either of the following transactions:

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- (i) the direct or indirect acquisition by any person or related group of persons (other than an acquisition from or by the Company or by a Company-sponsored employee benefit plan or by a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders which a majority of the Continuing Directors who are not Affiliates or Associates of the offeror do not recommend such stockholders accept, or
 - (ii) a change in the composition of the Board over a period of twelve (12) months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who are Continuing Directors.
- (j) "Code" means the Internal Revenue Code of 1986, as amended.
- (k) "Committee" means any committee composed of members of the Board appointed by the Board to administer the Plan.
- (l) "Common Stock" means the common stock of the Company.
- (m) "Company" means ImmunityBio, Inc., a Delaware corporation, or any successor entity that adopts the Plan in connection with a Corporate Transaction.
- (n) "Consultant" means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a Director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.
- (o) "Continuing Directors" means members of the Board who either (i) have been Board members continuously for a period of at least twelve (12) months or (ii) have been Board members for less than twelve (12) months and were elected or nominated for election as Board members by at least a majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.
- (p) "Continuous Service" means that the provision of services to the Company or a Related Entity in any capacity of Employee, Director or Consultant is not interrupted or terminated. In jurisdictions requiring notice in advance of an effective termination as an Employee, Director or Consultant, Continuous Service shall be deemed terminated upon the actual cessation of providing services to the Company or a Related Entity notwithstanding any required notice period that must be fulfilled before a termination as an Employee, Director or Consultant can be effective under Applicable Laws. A Grantee's Continuous Service shall be deemed to have terminated either upon an actual termination of Continuous Service or upon the entity for which the Grantee provides services ceasing to be a Related Entity. Continuous Service shall not be considered interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entity, or any successor, in any capacity of Employee, Director or Consultant, or (iii) any change in status as long as the individual remains in the service of the Company or a Related Entity in any capacity of Employee, Director or Consultant (except as otherwise provided in the Award Agreement). An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave. For purposes of each Incentive Stock Option granted under the Plan, if such leave exceeds three (3) months, and reemployment upon expiration of such leave is not guaranteed by statute or contract, then the Incentive Stock Option shall be treated as a Non-Qualified Stock Option on the day three (3) months and one (1) day following the expiration of such three (3) month period.
- (q) "Corporate Transaction" means any of the following transactions, provided, however, that the Administrator shall determine under parts (iv) and (v) whether multiple transactions are related, and its determination shall be final, binding and conclusive:
- (i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;
 - (ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;
 - (iii) the complete liquidation or dissolution of the Company;

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(iv) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but (A) the shares of Common Stock outstanding immediately prior to such merger are converted or exchanged by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (B) in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger, but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction;

(v) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction; or

(vi) any other transaction that the Administrator determines in its sole discretion to be a Corporate Transaction.

(r) "Covered Employee" means an Employee who is a "covered employee" under Section 162(m)(3) of the Code.

(s) "Director" means a member of the Board or the board of directors of any Related Entity.

(t) "Disability" means as defined under the long-term disability policy of the Company or the Related Entity to which the Grantee provides services regardless of whether the Grantee is covered by such policy. If the Company or the Related Entity to which the Grantee provides service does not have a long-term disability plan in place, "Disability" means that a Grantee is unable to carry out the responsibilities and functions of the position held by the Grantee by reason of any medically determinable physical or mental impairment for a period of not less than ninety (90) consecutive days. A Grantee will not be considered to have incurred a Disability unless he or she furnishes proof of such impairment sufficient to satisfy the Administrator in its discretion.

(u) "Dividend Equivalent Right" means a right entitling the Grantee to compensation measured by dividends paid with respect to Common Stock.

(v) "Employee" means any person, including an Officer or Director, who is in the employ of the Company or any Related Entity, subject to the control and direction of the Company or any Related Entity as to both the work to be performed and the manner and method of performance. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute "employment" by the Company.

(w) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(x) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market of The NASDAQ Stock Market LLC, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on the principal exchange or system on which the Common Stock is listed (as determined by the Administrator) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

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(ii) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system or by such securities dealer on the date of determination, but if selling prices are not reported, the Fair Market Value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock of the type described in (i) and (ii), above, the Fair Market Value thereof shall be determined by the Administrator in good faith and in a manner consistent with Applicable Laws.

(y) “Grantee” means an Employee, Director or Consultant who receives an Award under the Plan.

(z) “Immediate Family” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Grantee’s household (other than a tenant or employee), a trust in which these persons (or the Grantee) have more than fifty percent (50%) of the beneficial interest, a foundation in which these persons (or the Grantee) control the management of assets, and any other entity in which these persons (or the Grantee) own more than fifty percent (50%) of the voting interests.

(aa) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(bb) “Non-Qualified Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

(cc) “Officer” means a person who is an officer of the Company or a Related Entity within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(dd) “Option” means an option to purchase Shares pursuant to an Award Agreement granted under the Plan.

(ee) “Parent” means a “parent corporation”, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(ff) “Performance-Based Compensation” means compensation qualifying as “performance-based compensation” under Section 162(m) of the Code.

(gg) “Plan” means this 2015 Stock Incentive Plan.

(hh) “Post-Termination Exercise Period” means the period specified in the Award Agreement of not less than thirty (30) days commencing on the date of termination (other than termination by the Company or any Related Entity for Cause) of the Grantee’s Continuous Service, or such longer period as may be applicable upon death or Disability.

(ii) “Registration Date” means the first to occur of: (i) the closing of the first sale to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended, of (A) the Common Stock or (B) the same class of securities of a successor corporation (or its Parent) issued pursuant to a Corporate Transaction in exchange for or in substitution of the Common Stock; or (ii) in the event of a Corporate Transaction, the date of the consummation of the Corporate Transaction if the same class of securities of the successor corporation (or its Parent) issuable in such Corporate Transaction shall have been sold to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended, on or prior to the date of consummation of such Corporate Transaction.

(jj) “Related Entity” means any Parent of the Company or any Subsidiary of the Company or of the Parent Company.

(kk) “Replaced” means that pursuant to a Corporate Transaction the Award is replaced with a comparable stock award or a cash incentive program of the Company, the successor entity (if applicable) or Parent of either of them which preserves the compensation element of such Award existing at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same (or a more favorable) vesting schedule applicable to such Award. The determination of Award comparability shall be made by the Administrator and its determination shall be final, binding and conclusive.

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(ll) “Restricted Stock” means Shares issued under the Plan to the Grantee for such consideration, if any, and subject to such restrictions on transfer, rights of first refusal, repurchase provisions, forfeiture provisions, and other terms and conditions as established by the Administrator.

(mm) “Restricted Stock Units” means an Award which may be earned in whole or in part upon the passage of time or the attainment of performance criteria established by the Administrator and which may be settled for cash, Shares or other securities or a combination of cash, Shares or other securities as established by the Administrator.

(nn) “Rule 16b-3” means Rule 16b-3 promulgated under the Exchange Act or any successor thereto.

(oo) “SAR” means a stock appreciation right entitling the Grantee to Shares or cash compensation, as established by the Administrator, measured by appreciation in the value of Common Stock.

(pp) “Share” means a share of the Common Stock.

(qq) “Subsidiary” means a “subsidiary corporation”, whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

(a) Subject to the provisions of Section 10 below, the maximum aggregate number of Shares which may be issued pursuant to all Awards (including Incentive Stock Options) is twenty-four million (24,000,000)¹ Shares. The Shares may be authorized, but unissued, or reacquired Common Stock.

(b) Any Shares covered by an Award (or portion of an Award) which is forfeited, canceled or expires (whether voluntarily or involuntarily) shall be deemed not to have been issued for purposes of determining the maximum aggregate number of Shares which may be issued under the Plan. Shares that actually have been issued under the Plan pursuant to an Award shall not be returned to the Plan and shall not become available for future issuance under the Plan, except that if unvested Shares are forfeited or repurchased by the Company, such Shares shall become available for future grant under the Plan. To the extent not prohibited by the listing requirements of The NASDAQ Stock Market LLC (or other established stock exchange or national market system on which the Common Stock is traded) or Applicable Laws, any Shares covered by an Award which are surrendered: (i) in payment of the Award exercise or purchase price (including pursuant to the “net exercise” of an option pursuant to Section 7(b)(vi)); or (ii) in satisfaction of tax withholding obligations incident to the exercise of an Award shall be deemed not to have been issued for purposes of determining the maximum number of Shares which may be issued pursuant to all Awards under the Plan, unless otherwise determined by the Administrator.

4. Administration of the Plan.

(a) Plan Administrator.

(i) Administration with Respect to Directors and Officers. Prior to the Registration Date, with respect to grants of Awards to Directors or Employees who are also Officers or Directors of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws. On or after the Registration Date, with respect to grants of Awards to Directors or Employees who are also Officers or Directors of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws and to permit such grants and related transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.

¹ After giving effect to the exchange ratio in the merger of 0.8190 and reducing this amount to those Shares being registered under this Post-Effective Amendment on Form S-3 to Registration Statement on Form S-4 (Shares held by those who are not the Company’s “employees” as that term is defined in Form S-8 under the Securities Act), the amount becomes one million, ninety-four thousand, three hundred seventy-seven (1,094,377).

(ii) Administration With Respect to Consultants and Other Employees. With respect to grants of Awards to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.

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(iii) Administration With Respect to Covered Employees. Notwithstanding the foregoing, as of and after the date that the exemption for the Plan under Section 162(m) of the Code expires, as set forth in Section 19 below, grants of Awards to any Covered Employee intended to qualify as Performance-Based Compensation shall be made only by a Committee (or subcommittee of a Committee) which is comprised solely of two or more Directors eligible to serve on a committee making Awards qualifying as Performance-Based Compensation. In the case of such Awards granted to Covered Employees, references to the "Administrator" or to a "Committee" shall be deemed to be references to such Committee or subcommittee.

(b) Multiple Administrative Bodies. The Plan may be administered by different bodies with respect to Directors, Officers, Consultants, and Employees who are neither Directors nor Officers.

(c) Powers of the Administrator. Subject to Applicable Laws and the provisions of the Plan (including any other powers given to the Administrator hereunder), and except as otherwise provided by the Board, the Administrator shall have the authority, in its discretion:

- (i) to select the Employees, Directors and Consultants to whom Awards may be granted from time to time hereunder;
- (ii) to determine whether and to what extent Awards are granted hereunder;
- (iii) to determine the number of Shares or the amount of other consideration to be covered by each Award granted hereunder;
- (iv) to approve forms of Award Agreements for use under the Plan;
- (v) to determine the terms and conditions of any Award granted hereunder;

(vi) to establish additional terms, conditions, rules or procedures to accommodate the rules or laws of applicable non-U.S. jurisdictions and to afford Grantees favorable treatment under such rules or laws; provided, however, that no Award shall be granted under any such additional terms, conditions, rules or procedures with terms or conditions which are inconsistent with the provisions of the Plan;

(vii) to amend the terms of any outstanding Award granted under the Plan, provided that any amendment that would adversely affect the Grantee's rights under an outstanding Award shall not be made without the Grantee's written consent, provided, however, that an amendment or modification that may cause an Incentive Stock Option to become a Non-Qualified Stock Option shall not be treated as adversely affecting the rights of the Grantee. Notwithstanding the foregoing, (A) the reduction or increase of the exercise price of any Option awarded under the Plan and the base appreciation amount of any SAR awarded under the Plan and (B) canceling an Option or SAR at a time when its exercise price or base appreciation amount (as applicable) exceeds the Fair Market Value of the underlying Shares, in exchange for another Option, SAR, Restricted Stock, or other Award or for cash, in each case, shall not be subject to stockholder approval;

(viii) to construe and interpret the terms of the Plan and Awards, including without limitation, any notice of award or Award Agreement, granted pursuant to the Plan; and

- (ix) to take such other action, not inconsistent with the terms of the Plan, as the Administrator deems appropriate.

The express grant in the Plan of any specific power to the Administrator shall not be construed as limiting any power or authority of the Administrator; provided that the Administrator may not exercise any right or power reserved to the Board. Any decision made, or action taken, by the Administrator or in connection with the administration of this Plan shall be final, conclusive and binding on all persons having an interest in the Plan.

(d) Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or as Officers or Employees of the Company or a Related Entity, members of the Board and any Officers or Employees of the Company or a Related Entity to whom authority to act for the Board, the Administrator or the Company is delegated shall be defended and indemnified by the Company to the extent permitted by law on an after-tax basis against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any claim, investigation, action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any Award granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Company) or paid by them in satisfaction of a judgment in any such claim, investigation, action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such claim, investigation, action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct; provided, however, that within thirty (30) days after the institution of such claim, investigation, action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at the Company's expense to defend the same.

5. Eligibility. Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants. Incentive Stock Options may be granted only to Employees of the Company or a Parent or a Subsidiary of the Company. An Employee, Director or Consultant who has been granted an Award may, if otherwise eligible, be granted additional Awards. Awards may be granted to such Employees, Directors or Consultants who are residing in non-U.S. jurisdictions as the Administrator may determine from time to time.

6. Terms and Conditions of Awards.

(a) Types of Awards. The Administrator is authorized under the Plan to award any type of arrangement to an Employee, Director or Consultant that is not inconsistent with the provisions of the Plan and that by its terms involves or might involve the issuance of (i) Shares, (ii) cash or (iii) an Option, a SAR, or similar right with a fixed or variable price related to the Fair Market Value of the Shares and with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions. Such awards include, without limitation, Options, SARs, sales or bonuses of Restricted Stock, Restricted Stock Units or Dividend Equivalent Rights, and an Award may consist of one such security or benefit, or two (2) or more of them in any combination or alternative.

(b) Designation of Award. Each Award shall be designated in the Award Agreement. In the case of an Option, the Option shall be designated as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designation, an Option will qualify as an Incentive Stock Option under the Code only to the extent the \$100,000 limitation of Section 422(d) of the Code is not exceeded. The \$100,000 limitation of Section 422(d) of the Code is calculated based on the aggregate Fair Market Value of the Shares subject to Options designated as Incentive Stock Options which become exercisable for the first time by a Grantee during any calendar year (under all plans of the Company or any Parent or Subsidiary of the Company). For purposes of this calculation, Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the grant date of the relevant Option. In the event that the Code or the regulations promulgated thereunder are amended after the date the Plan becomes effective to provide for a different limit on the Fair Market Value of Shares permitted to be subject to Incentive Stock Options, then such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

(c) Conditions of Award. Subject to the terms of the Plan, the Administrator shall determine the provisions, terms, and conditions of each Award including, but not limited to, the Award vesting schedule, repurchase provisions, rights of first refusal, forfeiture provisions, form of payment (cash, Shares, or other consideration) upon settlement of the Award, payment contingencies, and satisfaction of any performance criteria. The performance criteria established by the Administrator may be based on any one of, or combination of, increase in share price, earnings per share, total stockholder return, return on equity, return on assets, return on investment, net operating income, cash flow, revenue, economic value added, personal management objectives, or other measure

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of performance selected by the Administrator. Partial achievement of the specified criteria may result in a payment or vesting corresponding to the degree of achievement as specified in the Award Agreement. In addition, the performance criteria shall be calculated in accordance with generally accepted accounting principles, but excluding the effect (whether positive or negative) of any change in accounting standards and any extraordinary, unusual or nonrecurring item, as determined by the Administrator, occurring after the establishment of the performance criteria applicable to the Award intended to be performance-based compensation. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of performance criteria in order to prevent the dilution or enlargement of the Grantee's rights with respect to an Award intended to be performance-based compensation.

(d) Acquisitions and Other Transactions. The Administrator may issue Awards under the Plan in settlement, assumption or substitution for, outstanding awards or obligations to grant future awards in connection with the Company or a Related Entity acquiring another entity, an interest in another entity or an additional interest in a Related Entity whether by merger, stock purchase, asset purchase or other form of transaction.

(e) Deferral of Award Payment. The Administrator may establish one or more programs under the Plan to permit selected Grantees the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Grantee to payment or receipt of Shares or other consideration under an Award. The Administrator may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Administrator deems advisable for the administration of any such deferral program.

(f) Separate Programs. The Administrator may establish one or more separate programs under the Plan for the purpose of issuing particular forms of Awards to one or more classes of Grantees on such terms and conditions as determined by the Administrator from time to time.

(g) Individual Limitations on Awards.

(i) Individual Option and SAR Limit. Following the date that the exemption from application of Section 162(m) of the Code described in Section 19 (or any exemption having similar effect) ceases to apply to Awards, the maximum number of Shares with respect to which Options and SARs may be granted to any Grantee in any calendar year shall be five million (5,000,000) Shares. In connection with a Grantee's commencement of Continuous Service, a Grantee may be granted Options and SARs for up to an additional five million (5,000,000) Shares which shall not count against the limit set forth in the previous sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below. To the extent required by Section 162(m) of the Code or the regulations thereunder, in applying the foregoing limitations with respect to a Grantee, if any Option or SAR is canceled, the canceled Option or SAR shall continue to count against the maximum number of Shares with respect to which Options and SARs may be granted to the Grantee. For this purpose, the repricing of an Option (or in the case of a SAR, the base amount on which the stock appreciation is calculated is reduced to reflect a reduction in the Fair Market Value of the Common Stock) shall be treated as the cancellation of the existing Option or SAR and the grant of a new Option or SAR.

(ii) Individual Limit for Restricted Stock and Restricted Stock Units. Following the date that the exemption from application of Section 162(m) of the Code described in Section 19 (or any exemption having similar effect) ceases to apply to Awards, for awards of Restricted Stock and Restricted Stock Units that are intended to be Performance-Based Compensation, the maximum number of Shares with respect to which such Awards may be granted to any Grantee in any calendar year shall be two million (2,000,000) Shares. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below.

(h) Early Exercise. The Award Agreement may, but need not, include a provision whereby the Grantee may elect at any time while an Employee, Director or Consultant to exercise any part or all of the Award prior to full vesting of the Award. Any unvested Shares received pursuant to such exercise may be subject to a repurchase right in favor of the Company or a Related Entity or to any other restriction the Administrator determines to be appropriate.

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(i) Term of Award. The term of each Award shall be the term stated in the Award Agreement, provided, however, that the term shall be no more than ten (10) years from the date of grant thereof. However, in the case of an Incentive Stock Option granted to a Grantee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the term of the Incentive Stock Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Award Agreement. Notwithstanding the foregoing, the specified term of any Award shall not include any period for which the Grantee has elected to defer the receipt of the Shares or cash issuable pursuant to the Award.

(j) Transferability of Awards. Incentive Stock Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Grantee, only by the Grantee. Other Awards shall be transferable (i) by will and by the laws of descent and distribution and (ii) during the lifetime of the Grantee, to the extent and in the manner authorized by the Administrator by gift or pursuant to a domestic relations order to members of the Grantee's Immediate Family. Notwithstanding the foregoing, the Grantee may designate one or more beneficiaries of the Grantee's Award in the event of the Grantee's death on a beneficiary designation form provided by the Administrator.

(k) Time of Granting Awards. The date of grant of an Award shall for all purposes be the date on which the Administrator makes the determination to grant such Award, or such other later date as is determined by the Administrator.

7. Award Exercise or Purchase Price, Consideration and Taxes.

(a) Exercise or Purchase Price. The exercise or purchase price, if any, for an Award shall be as follows:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option, the per Share exercise price shall be such price as is determined by the Administrator.

(iii) In the case of SARs, the base appreciation amount shall not be less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iv) In the case of Awards intended to qualify as Performance-Based Compensation, the exercise or purchase price, if any, shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(v) In the case of the sale of Shares, the per Share purchase price, if any, shall be such price as is determined by the Administrator.

(vi) In the case of other Awards, such price as is determined by the Administrator.

(vii) Notwithstanding the foregoing provisions of this Section 7(a), in the case of an Award issued pursuant to Section 6(d), above, the exercise or purchase price for the Award shall be determined in accordance with the provisions of the relevant instrument evidencing the agreement to issue such Award.

(b) Consideration. Subject to Applicable Laws, the consideration to be paid for the Shares to be issued upon exercise or purchase of an Award including the method of payment, shall be determined by the Administrator. In addition to any other types of consideration the Administrator may determine, the Administrator is authorized to accept as consideration for Shares issued under the Plan the following:

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(i) cash;

(ii) check;

(iii) delivery of Grantee's promissory note with such recourse, interest, security, and redemption provisions as the Administrator determines as appropriate (but only to the extent that the acceptance or terms of the promissory note would not violate an Applicable Law);

(iv) 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 said Award shall be exercised;

(v) with respect to Options, if the exercise occurs on or after the Registration Date, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (A) 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 (B) 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) with respect to Options, payment through a "net exercise" such that, without the payment of any funds, the Grantee may exercise the Option and receive the net number of Shares equal to (i) the number of Shares as to which the Option is being exercised, multiplied by (ii) 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); or

(vii) any combination of the foregoing methods of payment.

The Administrator may at any time or from time to time, by adoption of or by amendment to the standard forms of Award Agreement described in Section 4(c)(iv), or by other means, grant Awards which do not permit all of the foregoing forms of consideration to be used in payment for the Shares or which otherwise restrict one or more forms of consideration.

(c) Taxes. No Shares shall be delivered under the Plan to any Grantee or other person until such Grantee or other person has made arrangements acceptable to the Administrator for the satisfaction of any non-U.S., federal, state, or local income and employment tax withholding obligations, including, without limitation, obligations incident to the receipt of Shares. Upon exercise or vesting of an Award the Company shall withhold or collect from the Grantee an amount sufficient to satisfy such tax obligations, including, but not limited to, by surrender of the whole number of Shares covered by the Award sufficient to satisfy the minimum applicable tax withholding obligations incident to the exercise or vesting of an Award (reduced to the lowest whole number of Shares if such number of Shares withheld would result in withholding a fractional Share with any remaining tax withholding settled in cash).

8. Exercise of Award.

(a) Procedure for Exercise; Rights as a Stockholder.

(i) Any Award granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator under the terms of the Plan and specified in the Award Agreement.

(ii) An Award shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Award by the person entitled to exercise the Award and full payment for the Shares with respect to which the Award is exercised has been made, including, to the extent selected, use of the broker-dealer sale and remittance procedure to pay the purchase price as provided in Section 7(b)(v).

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(b) Exercise of Award Following Termination of Continuous Service. In the event of termination of a Grantee's Continuous Service for any reason other than Disability or death (but not in the event of a Grantee's change of status from Employee to Consultant or from Consultant to Employee), such Grantee may, but only during the Post-Termination Exercise Period (but in no event later than the expiration date of the term of such Award as set forth in the Award Agreement), exercise the portion of the Grantee's Award that was vested at the date of such termination or such other portion of the Grantee's Award as may be determined by the Administrator. The Grantee's Award Agreement may provide that upon the termination of the Grantee's Continuous Service for Cause, the Grantee's right to exercise the Award shall terminate concurrently with the termination of Grantee's Continuous Service. In the event of a Grantee's change of status from Employee to Consultant, an Employee's Incentive Stock Option shall convert automatically to a Non-Qualified Stock Option on the day three (3) months and one day following such change of status. To the extent that the Grantee's Award was unvested at the date of termination, or if the Grantee does not exercise the vested portion of the Grantee's Award within the Post-Termination Exercise Period, the Award shall terminate.

(c) Disability of Grantee. In the event of termination of a Grantee's Continuous Service as a result of his or her Disability, such Grantee may, but only within twelve (12) months from the date of such termination (or such longer period as specified in the Award Agreement but in no event later than the expiration date of the term of such Award as set forth in the Award Agreement), exercise the portion of the Grantee's Award that was vested at the date of such termination; provided, however, that if such Disability is not a "disability" as such term is defined in Section 22(e)(3) of the Code, in the case of an Incentive Stock Option such Incentive Stock Option shall automatically convert to a Non-Qualified Stock Option on the day three (3) months and one day following such termination. To the extent that the Grantee's Award was unvested at the date of termination, or if Grantee does not exercise the vested portion of the Grantee's Award within the time specified herein, the Award shall terminate.

(d) Death of Grantee. In the event of a termination of the Grantee's Continuous Service as a result of his or her death, or in the event of the death of the Grantee during the Post-Termination Exercise Period or during the twelve (12) month period following the Grantee's termination of Continuous Service as a result of his or her Disability, the Grantee's estate or a person who acquired the right to exercise the Award by bequest or inheritance may exercise the portion of the Grantee's Award that was vested as of the date of termination, within twelve (12) months from the date of death (or such longer period as specified in the Award Agreement but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). To the extent that, at the time of death, the Grantee's Award was unvested, or if the Grantee's estate or a person who acquired the right to exercise the Award by bequest or inheritance does not exercise the vested portion of the Grantee's Award within the time specified herein, the Award shall terminate.

(e) Extension if Exercise Prevented by Law. Notwithstanding the foregoing, if the exercise of an Award within the applicable time periods set forth in this Section 8 is prevented by the provisions of Section 9 below, the Award shall remain exercisable until one (1) month after the date the Grantee is notified by the Company that the Award is exercisable, but in any event no later than the expiration of the term of such Award as set forth in the Award Agreement and only in a manner and to the extent permitted under Code Section 409A.

9. Conditions Upon Issuance of Shares.

(a) If at any time the Administrator determines that the delivery of Shares pursuant to the exercise, vesting or any other provision of an Award is or may be unlawful under Applicable Laws, the vesting or right to exercise an Award or to otherwise receive Shares pursuant to the terms of an Award shall be suspended until the Administrator determines that such delivery is lawful and shall be further subject to the approval of counsel for the Company with respect to such compliance. The Company shall have no obligation to effect any registration or qualification of the Shares under federal or state laws.

(b) As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws.

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10. Adjustments Upon Changes in Capitalization. Subject to any required action by the stockholders of the Company and Section 11 below, the number of Shares covered by each outstanding Award, and the number of Shares which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan, the exercise or purchase price of each such outstanding Award, the maximum number of Shares with respect to which Awards may be granted to any Grantee in any calendar year, as well as any other terms that the Administrator determines require adjustment shall be proportionately adjusted for: (i) any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, recapitalization, combination or reclassification of the Shares, or similar transaction affecting the Shares; (ii) any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Company; or (iii) any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” In the event of any distribution of cash or other assets to stockholders other than a normal cash dividend, the Administrator shall also make such adjustments as provided in this Section 10 or substitute, exchange or grant Awards to effect such adjustments (collectively “adjustments”). Any such adjustments to outstanding Awards will be effected in a manner that precludes the enlargement of rights and benefits under such Awards. In connection with the foregoing adjustments, the Administrator may, in its discretion, prohibit the exercise of Awards or other issuance of Shares, cash or other consideration pursuant to Awards during certain periods of time. Except as the Administrator determines, no issuance by the Company of shares of any class, or securities convertible into shares of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the number or price of Shares subject to an Award.

11. Corporate Transactions and Changes in Control.

(a) Termination of Award to Extent Not Assumed or Replaced in Corporate Transaction. Effective upon the consummation of a Corporate Transaction, all outstanding Awards under the Plan shall terminate. The Administrator shall have the authority to Replace any Award that remains outstanding in connection with a Corporate Transaction. However, all such Awards shall not terminate to the extent they are Assumed in connection with the Corporate Transaction.

(b) Acceleration of Award Upon Corporate Transaction or Change in Control. The Administrator shall have the authority, exercisable either in advance of any actual or anticipated Corporate Transaction or Change in Control or at the time of an actual Corporate Transaction or Change in Control and exercisable at the time of the grant of an Award under the Plan or any time while an Award remains outstanding, to provide for the full or partial automatic vesting and exercisability of one or more outstanding unvested Awards under the Plan and the release from restrictions on transfer and repurchase or forfeiture rights of such Awards in connection with a Corporate Transaction or Change in Control, on such terms and conditions as the Administrator may specify. The Administrator also shall have the authority to condition any such Award vesting and exercisability or release from such limitations upon the subsequent termination of the Continuous Service of the Grantee within a specified period following the effective date of the Corporate Transaction or Change in Control. The Administrator may provide that any Awards so vested or released from such limitations in connection with a Change in Control, shall remain fully exercisable until the expiration or sooner termination of the Award.

(c) Effect of Acceleration on Incentive Stock Options. Any Incentive Stock Option accelerated under this Section 11 in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Stock Option under the Code only to the extent the \$100,000 dollar limitation of Section 422(d) of the Code is not exceeded.

12. Amendment, Suspension or Termination of the Plan.

(a) The Board may at any time amend, suspend or terminate the Plan. To the extent necessary to comply with Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) No Award may be granted during any suspension of the Plan or after termination of the Plan.

(c) No suspension or termination of the Plan (including termination of the Plan under Section 12, above) shall adversely affect any rights under Awards already granted to a Grantee.

13. Reservation of Shares.

(a) The Company, during the term of the Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

(b) The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

14. No Effect on Terms of Employment/Consulting Relationship. The Plan shall not confer upon any Grantee any right with respect to the Grantee's Continuous Service, nor shall it interfere in any way with his or her right or the right of the Company or any Related Entity to terminate the Grantee's Continuous Service at any time, including, but not limited to, Cause, and with or without notice. The ability of the Company or any Related Entity to terminate the employment of a Grantee who is employed at will is in no way affected by its determination that the Grantee's Continuous Service has been terminated for Cause for the purposes of this Plan.

15. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Related Entity, Awards shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Related Entity, and shall not affect any benefits under any other benefit plan of any kind or any benefit plan subsequently instituted under which the availability or amount of benefits is related to level of compensation. The Plan is not a "Pension Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

16. Stockholder Approval. Continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the degree and manner required under Applicable Laws. Any Award exercised before stockholder approval is obtained shall be rescinded if stockholder approval is not obtained within the time prescribed, and Shares issued on the exercise of any such Award shall not be counted in determining whether stockholder approval is obtained.

17. Information to Grantees. To the extent required by Applicable Laws, the Company shall provide to each Grantee, during the period for which such Grantee has one or more Awards outstanding, copies of financial statements at least annually. The Company shall not be required to provide such information to persons whose duties in connection with the Company assure them access to equivalent information.

18. Effect of Section 162(m) of the Code. Section 162(m) of the Code does not apply to the Plan prior to the Registration Date or such earlier time that the Company first becomes subject to the reporting obligations of Section 12 of the Exchange Act. Following the Registration Date or such earlier time that the Company first becomes subject to the reporting obligations of Section 12 of the Exchange Act, the Plan, and all Awards (except Awards of Restricted Stock that vest over time) issued thereunder, are intended to be exempt from the application of Section 162(m) of the Code, which restricts under certain circumstances the Federal income tax deduction for compensation paid by a public company to named executives in excess of \$1 million per year. The exemption is based on Treasury Regulation Section 1.162-27(f), in the form existing on the effective date of the Plan, with the understanding that such regulation generally exempts from the application of Section 162(m) of the Code compensation paid pursuant to a plan that existed before a company becomes publicly held. Under such Treasury Regulation, this exemption is available to the Plan for the duration of the period that lasts until the earliest of (i) the expiration of the Plan, (ii) the material modification of the Plan, (iii) the exhaustion of the maximum number of shares of Common Stock available for Awards under the Plan, as set forth in Section 3(a), (iv) the first meeting of stockholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the Company first becomes subject to the reporting obligations of Section 12 of the Exchange Act, or (v) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder. To the extent that the Administrator determines as of the date of grant of an Award that (i) the Award is intended to qualify as Performance-Based Compensation and (ii) the exemption described above is no longer available with respect to such Award, such Award shall not be effective until any stockholder approval required under Section 162(m) of the Code has been obtained.

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19. Unfunded Obligation. Grantees shall have the status of general unsecured creditors of the Company. Any amounts payable to Grantees pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. Neither the Company nor any Related Entity shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Grantee account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Related Entity and a Grantee, or otherwise create any vested or beneficial interest in any Grantee or the Grantee's creditors in any assets of the Company or a Related Entity. The Grantees shall have no claim against the Company or any Related Entity for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

20. Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

21. Nonexclusivity of the Plan. Neither the adoption of the Plan by the Board, the submission of the Plan to the stockholders of the Company for approval, nor any provision of the Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of Awards otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

AMENDED AND RESTATED IMMUNITYBIO, INC.

2015 STOCK INCENTIVE PLAN

NOTICE OF STOCK OPTION AWARD

Grantee's Name and Address:

You (the "Grantee") have been granted an option to purchase shares of Common Stock, subject to the terms and conditions of this Notice of Stock Option Award (the "Notice"), the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan, as amended from time to time (the "Plan") and the Stock Option Award Agreement (the "Option Agreement") attached hereto, as follows. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Notice.

Award Number

Date of Award

Vesting Commencement Date

Exercise Price per Share

Total Number of Shares Subject to the Option (the "Shares")

Total Exercise Price

Type of Option:

Incentive Stock Option

Non-Qualified Stock Option

Expiration Date:

Post-Termination Exercise Period: Three (3) Months

Vesting Schedule:

Subject to the Grantee's Continuous Service and other limitations set forth in this Notice, the Plan and the Option Agreement, the Option may be exercised, in whole or in part, in accordance with the following schedule:

[e.g., 25% of the Shares subject to the Option shall vest twelve (12) months after the Vesting Commencement Date, and 1/36 of the remaining unvested Shares subject to the Option shall vest on each of the next thirty-six (36) monthly anniversaries of the Vesting Commencement Date thereafter.]

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During any authorized leave of absence, the vesting of the Option as provided in this schedule shall be suspended after the leave of absence exceeds a period of three (3) months. Vesting of the Option shall resume upon the Grantee's termination of the leave of absence and return to service to the Company or a Related Entity. The Vesting Schedule of the Option shall be extended by the length of the suspension.

In the event of termination of the Grantee's Continuous Service for Cause, the Grantee's right to exercise the Option shall terminate concurrently with the termination of the Grantee's Continuous Service, except as otherwise determined by the Administrator.

IN WITNESS WHEREOF, the Company and the Grantee have executed this Notice and agree that the Option is to be governed by the terms and conditions of this Notice, the Plan, and the Option Agreement.

IMMUNITYBIO, INC.,
a Delaware corporation

By: _____
Title: _____

THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE SHARES SUBJECT TO THE OPTION SHALL VEST, IF AT ALL, ONLY DURING THE PERIOD OF THE GRANTEE'S CONTINUOUS SERVICE (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THE OPTION OR ACQUIRING SHARES HEREUNDER). THE GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT NOTHING IN THIS NOTICE, THE OPTION AGREEMENT, OR THE PLAN SHALL CONFER UPON THE GRANTEE ANY RIGHT WITH RESPECT TO FUTURE AWARDS OR CONTINUATION OF THE GRANTEE'S CONTINUOUS SERVICE, NOR SHALL IT INTERFERE IN ANY WAY WITH THE GRANTEE'S RIGHT OR THE RIGHT OF THE COMPANY OR RELATED ENTITY TO WHICH THE GRANTEE PROVIDES SERVICES TO TERMINATE THE GRANTEE'S CONTINUOUS SERVICE, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE. THE GRANTEE ACKNOWLEDGES THAT UNLESS THE GRANTEE HAS A WRITTEN EMPLOYMENT AGREEMENT WITH THE COMPANY TO THE CONTRARY, THE GRANTEE'S STATUS IS AT WILL.

The Grantee acknowledges receipt of a copy of the Plan and the Option Agreement, and represents that he or she is familiar with the terms and provisions thereof, and hereby accepts the Option subject to all of the terms and provisions hereof and thereof. The Grantee has reviewed this Notice, the Plan, and the Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Notice, and fully understands all provisions of this Notice, the Plan and the Option Agreement. The Grantee hereby agrees that all questions of interpretation and administration relating to this Notice, the Plan and the Option Agreement shall be resolved by the Administrator in accordance with Section 19 of the Option Agreement. The Grantee further agrees to the venue selection in accordance with Section 20 of the Option Agreement. The Grantee further agrees to notify the Company upon any change in the residence address indicated in this Notice.

Dated: _____ Signed: _____
Grantee

AMENDED AND RESTATED IMMUNITYBIO, INC. 2015 STOCK INCENTIVE PLAN

STOCK OPTION AWARD AGREEMENT

1. Grant of Option. ImmunityBio, Inc., a Delaware corporation (the “Company”), hereby grants to the Grantee (the “Grantee”) named in the Notice of Stock Option Award (the “Notice”), an option (the “Option”) to purchase the Total Number of Shares of Common Stock subject to the Option (the “Shares”) set forth in the Notice, at the Exercise Price per Share set forth in the Notice (the “Exercise Price”) subject to the terms and provisions of the Notice, this Stock Option Award Agreement (the “Option Agreement”) and the Company’s 2015 Stock Incentive Plan, as amended from time to time (the “Plan”), which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Option Agreement.

If designated in the Notice as an Incentive Stock Option, the Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. However, notwithstanding such designation, the Option will qualify as an Incentive Stock Option under the Code only to the extent the \$100,000 dollar limitation of Section 422(d) of the Code is not exceeded. The \$100,000 limitation of Section 422(d) of the Code is calculated based on the aggregate Fair Market Value of the Shares subject to options designated as Incentive Stock Options which become exercisable for the first time by the Grantee during any calendar year (under all plans of the Company or any Parent or Subsidiary of the Company). For purposes of this calculation, Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the shares subject to such options shall be determined as of the grant date of the relevant option.

2. Exercise of Option.

(a) **Right to Exercise.** The Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Notice and with the applicable provisions of the Plan and this Option Agreement. The Option shall be subject to the provisions of Section 11 of the Plan relating to the exercisability or termination of the Option in the event of a Corporate Transaction or Change in Control. The Grantee shall be subject to reasonable limitations on the number of requested exercises during any monthly or weekly period as determined by the Administrator. In no event shall the Company issue fractional Shares.

(b) **Method of Exercise.** The Option shall be exercisable by delivery of an exercise notice (a form of which is attached as Exhibit A) or by such other procedure as specified from time to time by the Administrator which shall state the election to exercise the Option, the whole number of Shares in respect of which the Option is being exercised, and such other provisions as may be required by the Administrator. The exercise notice shall be delivered in person, by certified mail, or by such other method (including electronic transmission) as determined from time to time by the Administrator to the Company accompanied by payment of the Exercise Price and all applicable income and employment taxes required to be withheld. The Option shall be deemed to be exercised upon receipt by the Company of such notice accompanied by the Exercise Price and all applicable withholding taxes, which, to the extent selected, shall be deemed to be satisfied by use of the broker-dealer sale and remittance procedure to pay the Exercise Price provided in Section 4(d) below to the extent such procedure is available to the Grantee at the time of exercise and such an exercise would not violate any Applicable Law.

(c) **Taxes.** No Shares will be delivered to the Grantee or other person pursuant to the exercise of the Option until the Grantee or other person has made arrangements acceptable to the Administrator for the satisfaction of applicable income tax and employment tax withholding obligations, including, without limitation, such other tax obligations of the Grantee incident to the receipt of Shares. Upon exercise of the Option, the Company or the Grantee’s employer may offset or withhold (from any amount owed by the Company or the Grantee’s employer to the Grantee) or collect from the Grantee or other person an amount sufficient to satisfy such tax withholding obligations. Furthermore, in the event of any determination that the Company has failed to withhold a sum sufficient to pay all withholding taxes due in connection with the Option, the Grantee agrees to pay the Company the amount of such deficiency in cash within five (5) days after receiving a written demand from the Company to do so, whether or not the Grantee is an employee of the Company at that time.

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3. Grantee's Representations. The Grantee understands that neither the Option nor the Shares exercisable pursuant to the Option have been registered under the Securities Act of 1933, as amended or any United States securities laws. In the event the Shares purchasable pursuant to the exercise of the Option have not been registered under the Securities Act of 1933, as amended, at the time the Option is exercised, the Grantee shall, if requested by the Company, concurrently with the exercise of all or any portion of the Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

4. 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 Grantee; provided, however, that such exercise method does not then violate any Applicable Law:

(a) cash;

(b) check;

(c) if the exercise occurs on or after the Registration Date, 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;

(d) if the exercise occurs on or after the Registration Date, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (i) 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 (ii) 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.

5. Restrictions on Exercise. The Option may not be exercised if the issuance of the Shares subject to the Option upon such exercise would constitute a violation of any Applicable Laws. In addition, the Option may not be exercised until such time as the Plan has been approved by the shareholders of the Company. If the exercise of the Option within the applicable time periods set forth in Section 6, 7 and 8 of this Option Agreement is prevented by the provisions of this Section 5, the Option shall remain exercisable until one (1) month after the date the Grantee is notified by the Company that the Option is exercisable, but in any event no later than the Expiration Date set forth in the Notice.

6. Termination or Change of Continuous Service. In the event the Grantee's Continuous Service terminates, other than for Cause, the Grantee may, but only during the Post-Termination Exercise Period, exercise the portion of the Option that was vested at the date of such termination (the "Termination Date"). The Post-Termination Exercise Period shall commence on the Termination Date. In the event of termination of the Grantee's Continuous Service for Cause, the Grantee's right to exercise the Option shall, except as otherwise determined by the Administrator, terminate concurrently with the termination of the Grantee's Continuous Service (also the "Termination Date"). In no event, however, shall the Option be exercised later than the Expiration Date set forth in the Notice. In the event of the Grantee's change in status from Employee, Director or Consultant to any other status of Employee, Director or Consultant, the Option shall remain in effect and the Option shall continue to vest in accordance with the Vesting Schedule set forth in the Notice; provided, however, with respect to any Incentive Stock Option that shall remain in effect after a change in status from Employee to Director or Consultant, such Incentive Stock Option shall cease to be treated as an Incentive Stock Option and shall be treated as a Non-Qualified Stock Option on the day three (3) months and one (1) day following such change in status. Except as provided in Sections 7 and 8 below, to the extent that the Option was unvested on the Termination Date, or if the Grantee does not exercise the vested portion of the Option within the Post-Termination Exercise Period, the Option shall terminate.

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7. Disability of Grantee. In the event the Grantee's Continuous Service terminates as a result of his or her Disability, the Grantee may, but only within twelve (12) months commencing on the Termination Date (but in no event later than the Expiration Date), exercise the portion of the Option that was vested on the Termination Date; provided, however, that if such Disability is not a "disability" as such term is defined in Section 22(e)(3) of the Code and the Option is an Incentive Stock Option, such Incentive Stock Option shall cease to be treated as an Incentive Stock Option and shall be treated as a Non-Qualified Stock Option on the day three (3) months and one (1) day following the Termination Date. To the extent that the Option was unvested on the Termination Date, or if the Grantee does not exercise the vested portion of the Option within the time specified herein, the Option shall terminate. Section 22(e)(3) of the Code provides that an individual is permanently and totally disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

8. Death of Grantee. In the event of the termination of the Grantee's Continuous Service as a result of his or her death, or in the event of the Grantee's death during the Post-Termination Exercise Period or during the twelve (12) month period following the Grantee's termination of Continuous Service as a result of his or her Disability, the person who acquired the right to exercise the Option pursuant to Section 9 may exercise the portion of the Option that was vested at the date of termination within twelve (12) months commencing on the date of death (but in no event later than the Expiration Date). To the extent that the Option was unvested on the date of death, or if the vested portion of the Option is not exercised within the time specified herein, the Option shall terminate.

9. Transferability of Option. The Option, if an Incentive Stock Option, may not be transferred in any manner other than by will or by the laws of descent and distribution and may be exercised during the lifetime of the Grantee only by the Grantee. The Option, if a Non-Qualified Stock Option, may not be transferred in any manner other than by will or by the laws of descent and distribution; provided, however, that a Non-Qualified Stock Option may be transferred during the lifetime of the Grantee by gift or pursuant to a domestic relations order to members of the Grantee's Immediate Family to the extent and in the manner determined by the Administrator. Notwithstanding the foregoing, the Grantee may designate one or more beneficiaries of the Grantee's Incentive Stock Option or Non-Qualified Stock Option in the event of the Grantee's death on a beneficiary designation form provided by the Administrator. Following the death of the Grantee, the Option, to the extent provided in Section 8, may be exercised (a) by the person or persons designated under the deceased Grantee's beneficiary designation or (b) in the absence of an effectively designated beneficiary, by the Grantee's legal representative or by any person empowered to do so under the deceased Grantee's will or under the then applicable laws of descent and distribution. The terms of the Option shall be binding upon the executors, administrators, heirs, successors and transferees of the Grantee.

10. Term of Option. The Option must be exercised no later than the Expiration Date set forth in the Notice or such earlier date as otherwise provided herein. After the Expiration Date or such earlier date, the Option shall be of no further force or effect and may not be exercised.

11. Company's Right of First Refusal.

(a) **Transfer Notice.** Neither the Grantee nor a transferee (either being sometimes referred to herein as the "Holder") shall sell, hypothecate, encumber or otherwise transfer any Shares or any right or interest therein without first complying with the provisions of this Section 11 or obtaining the prior written consent of the Company and provided further that such Shares are "Mature Shares" (which means that the Shares have been held by the Holder (and any successor Holder) for the requisite period, if any, necessary to avoid a charge to the Company's earnings for financial reporting purposes). In the event the Holder desires to accept a bona fide third-party offer for any or all of the Shares, the Holder shall provide the Company with written notice (the "Transfer Notice") of:

- (i) The Holder's intention to transfer;
- (ii) The name of the proposed transferee;
- (iii) The number of Shares to be transferred; and
- (iv) The proposed transfer price or value and terms thereof.

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If the Holder proposes to transfer any Shares to more than one transferee, the Holder shall provide a separate Transfer Notice for the proposed transfer to each transferee. The Transfer Notice shall be signed by both the Holder and the proposed transferee and must constitute a binding commitment of the Holder and the proposed transferee for the transfer of the Shares to the proposed transferee subject to the terms and conditions of this Option Agreement.

(b) Bona Fide Transfer. If the Company determines that the information provided by the Holder in the Transfer Notice is insufficient to establish the bona fide nature of a proposed voluntary transfer, the Company shall give the Holder written notice of the Holder's failure to comply with the procedure described in this Section 11, and the Holder shall have no right to transfer the Shares without first complying with the procedure described in this Section 11. The Holder shall not be permitted to transfer the Shares if the proposed transfer is not bona fide.

(c) First Refusal Exercise Notice. The Company shall have the right to purchase (the "Right of First Refusal") all but not less than all, of the Shares which are described in the Transfer Notice (the "Offered Shares"). The Offered Shares shall be repurchased at (i) the per share price or value and in accordance with the terms stated in the Transfer Notice (subject to Section 11(d) below) or (ii) the Fair Market Value of the Shares on the date on which the purchase is to be effected if no consideration is paid pursuant to the terms stated in the Transfer Notice, which Right of First Refusal shall be exercised by written notice (the "First Refusal Exercise Notice") to the Holder at any time within thirty (30) days after receipt of the Transfer Notice (the "Option Period"). During the Option Period or the 45-day period specified in Section 11(f) below, the Company may exercise its Repurchase Right (as set forth in Section 12 below) in lieu of or in addition to its Right of First Refusal if the Repurchase Right is or becomes exercisable during the Option Period or such 45-day period.

(d) Payment Terms. The Company shall consummate the purchase of the Offered Shares on the terms set forth in the Transfer Notice within sixty (60) days after delivery of the First Refusal Exercise Notice; provided, however, that in the event the Transfer Notice provides for the payment for the Offered Shares other than in cash, the Company and/or its assigns shall have the right to pay for the Offered Shares by the discounted cash equivalent of the consideration described in the Transfer Notice as reasonably determined by the Administrator. Upon payment for the Offered Shares to the Holder or into escrow for the benefit of the Holder, the Company or its assigns shall become the legal and beneficial owner of the Offered Shares and all rights and interest therein or related thereto, and the Company shall have the right to transfer the Offered Shares to its own name or its assigns without further action by the Holder.

(e) Assignment. Whenever the Company shall have the right to purchase Shares under this Right of First Refusal, the Company may designate and assign one or more employees, officers, directors or shareholders of the Company or other persons or organizations, to exercise all or a part of the Company's Right of First Refusal.

(f) Non-Exercise. If the Company and/or its assigns do not collectively elect to exercise the Right of First Refusal within the Option Period or such earlier time if the Company and/or its assigns notifies the Holder that it will not exercise the Right of First Refusal, then the Holder may transfer the Shares upon the terms and conditions stated in the Transfer Notice, provided that:

(i) The transfer is made within forty-five (45) days of the earlier of (A) the date the Company and/or its assigns notify the Holder that the Right of First Refusal will not be exercised or (B) the expiration of the Option Period; and

(ii) The transferee agrees in writing that such Shares shall be held subject to the provisions of this Option Agreement.

The Company shall have the right to demand further assurances from the Holder and the transferee (in a form satisfactory to the Company) that the transfer of the Offered Shares was actually carried out on the terms and conditions described in the Transfer Notice. No Offered Shares shall be transferred on the books of the Company until the Company has received such assurances, if so demanded, and has approved the proposed transfer as bona fide.

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(g) Expiration of Transfer Period. Following such 45-day period, no transfer of the Offered Shares and no change in the terms of the transfer as stated in the Transfer Notice (including the name of the proposed transferee) shall be permitted without a new written Transfer Notice prepared and submitted in accordance with the requirements of this Right of First Refusal.

(h) Termination of Right of First Refusal. The provisions of this Right of First Refusal shall terminate as to all Shares upon the Registration Date.

(i) Additional Shares or Substituted Securities. In the event of any transaction described in Sections 10 or 11 of the Plan, any new, substituted or additional securities or other property which is by reason of any such transaction distributed with respect to the Shares shall be immediately subject to the Right of First Refusal, but only to the extent the Shares are at the time covered by such right.

12. Company's Repurchase Right.

(a) Grant of Repurchase Right. The Company is hereby granted the right (the "Repurchase Right"), exercisable at any time (i) during the nine (9) month period following the Termination Date, or (ii) during the nine (9) month period following an exercise of the Option that occurs after the Termination Date to repurchase all or any portion of the Shares (the "Share Repurchase Period").

(b) Exercise of the Repurchase Right. The Repurchase Right shall be exercisable by written notice delivered to each Holder of the Shares prior to the expiration of the Share Repurchase Period. The notice shall indicate the number of Shares to be repurchased and the date on which the repurchase is to be effected, such date to be not later than the last day of the Share Repurchase Period. On the date on which the repurchase is to be effected, the Company and/or its assigns shall pay to the Holder in cash or cash equivalents (including the cancellation of any purchase-money indebtedness) an amount equal to the Fair Market Value of the Shares on the date on which the repurchase is to be effected of the Shares which are to be repurchased from the Holder. Upon such payment or deposit into escrow for the benefit of the Holder, the Company and/or its assigns shall become the legal and beneficial owner of the Shares being repurchased and all rights and interest thereon or related thereto, and the Company shall have the right to transfer to its own name or its assigns the number of Shares being repurchased, without further action by the Holder.

(c) Assignment. Whenever the Company shall have the right to purchase Shares under this Repurchase Right, the Company may designate and assign one or more employees, officers, directors or shareholders of the Company or other persons or organizations, to exercise all or a part of the Company's Repurchase Right.

(d) Termination of the Repurchase Right. The Repurchase Right shall terminate with respect to any Shares for which it is not timely exercised. In addition, the Repurchase Right shall terminate and cease to be exercisable with respect to all Shares upon the Registration Date.

(e) Additional Shares or Substituted Securities. In the event of any transaction described in Sections 10 or 11 of the Plan, any new, substituted or additional securities or other property which is by reason of any such transaction distributed with respect to the Shares shall be immediately subject to the Repurchase Right, but only to the extent the Shares are at the time covered by such right.

13. Stop-Transfer Notices. In order to ensure compliance with the restrictions on transfer set forth in this Option Agreement, the Notice or the Plan, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

14. Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Option Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

15. Tax Consequences.

(a) The Grantee may incur tax liability as a result of the Grantee's purchase or disposition of the Shares. THE GRANTEE SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THE OPTION OR DISPOSING OF THE SHARES.

(b) Notwithstanding the Company's good faith determination of the Fair Market Value of the Company's Common Stock for purposes of determining the Exercise Price Per Share of the Option as set forth in the Notice, the taxing authorities may assert that the Fair Market Value of the Common Stock on the Date of Award was greater than the Exercise Price Per Share. If designated in the Notice as an Incentive Stock Option, the Option may fail to qualify as an Incentive Stock Option if the Exercise Price Per Share of the Option is less than the Fair Market Value of the Common Stock on the Date of Award. In addition, under Section 409A of the Code, if the Exercise Price Per Share of the Option is less than the Fair Market Value of the Common Stock on the Date of Award, the Option may be treated as a form of deferred compensation and the Grantee may be subject to an acceleration of income recognition, an additional 20% tax, plus interest and possible penalties. The Company makes no representation that the Option will comply with Section 409A of the Code and makes no undertaking to prevent Section 409A of the Code from applying to the Option or to mitigate its effects on any deferrals or payments made in respect of the Option. The Grantee is encouraged to consult a tax adviser regarding the potential impact of Section 409A of the Code.

16. Lock-Up Agreement.

(a) Agreement. The Grantee, if requested by the Company and the lead underwriter of any public offering of the Common Stock (the "Lead Underwriter"), hereby irrevocably agrees not to sell, contract to sell, grant any option to purchase, transfer the economic risk of ownership in, make any short sale of, pledge or otherwise transfer or dispose of any interest in any Common Stock or any securities convertible into or exchangeable or exercisable for or any other rights to purchase or acquire Common Stock (except Common Stock included in such public offering or acquired on the public market after such offering) during the 180-day period following the effective date of a registration statement of the Company filed under the Securities Act of 1933, as amended, or such shorter or longer period of time as the Lead Underwriter shall specify. The Grantee further agrees to sign such documents as may be requested by the Lead Underwriter to effect the foregoing and agrees that the Company may impose stop-transfer instructions with respect to such Common Stock subject to the lock-up period until the end of such period. The Company and the Grantee acknowledge that each Lead Underwriter of a public offering of the Company's stock, during the period of such offering and for the lock-up period thereafter, is an intended beneficiary of this Section 16.

(b) No Amendment Without Consent of Underwriter. During the period from identification of a Lead Underwriter in connection with any public offering of the Company's Common Stock until the earlier of (i) the expiration of the lock-up period specified in Section 16(a) in connection with such offering or (ii) the abandonment of such offering by the Company and the Lead Underwriter, the provisions of this Section 16 may not be amended or waived except with the consent of the Lead Underwriter.

17. Entire Agreement: Governing Law. The Notice, the Plan and this Option Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Notice, the Plan and this Option Agreement (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties. The Notice, the Plan and this Option Agreement are to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Should any provision of the Notice, the Plan or this Option Agreement be determined to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

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18. Construction. The captions used in the Notice and this Option Agreement are inserted for convenience and shall not be deemed a part of the Option for construction or interpretation. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

19. Administration and Interpretation. Any question or dispute regarding the administration or interpretation of the Notice, the Plan or this Option Agreement shall be submitted by the Grantee or by the Company to the Administrator. The resolution of such question or dispute by the Administrator shall be final and binding on all persons.

20. Venue. The Company, the Grantee, and the Grantee’s assignees pursuant to Section 9 (the “parties”) agree that any suit, action, or proceeding arising out of or relating to the Notice, the Plan or this Option Agreement shall be brought in the United States District Court for the Central District of California (or should such court lack jurisdiction to hear such action, suit or proceeding, in a California state court in the County of Los Angeles) and that the parties shall submit to the jurisdiction of such court. The parties irrevocably waive, to the fullest extent permitted by law, any objection the party may have to the laying of venue for any such suit, action or proceeding brought in such court. If any one or more provisions of this Section 20 shall for any reason be held invalid or unenforceable, it is the specific intent of the parties that such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable.

21. Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, upon deposit for delivery by an internationally recognized express mail courier service or upon deposit in the United States mail by certified mail (if the parties are within the United States), with postage and fees prepaid, addressed to the other party at its address as shown in these instruments, or to such other address as such party may designate in writing from time to time to the other party.

22. Confidentiality. To the extent required by Applicable Law, the Company shall provide to the Grantee, during the period the Option is outstanding, copies of financial statements of the Company at least annually. The Grantee understands and agrees that such financial statements are confidential and shall not be disclosed by the Grantee, to any entity or person, for any reason, at any time, without the prior written consent of the Company, unless required by law. If disclosure of such financial statements is required by law, whether through subpoena, request for production, deposition, or otherwise, the Grantee promptly shall provide written notice to Company, including copies of the subpoena, request for production, deposition, or otherwise, within five (5) business days of their receipt by the Grantee and prior to any disclosure so as to provide Company an opportunity to move to quash or otherwise to oppose the disclosure. Notwithstanding the foregoing, the Grantee may disclose the terms of such financial statements to his or her spouse or domestic partner, and for legitimate business reasons, to legal, financial, and tax advisors.

END OF AGREEMENT

EXHIBIT A

AMENDED AND RESTATED IMMUNITYBIO, INC. 2015 STOCK INCENTIVE PLAN

EXERCISE NOTICE

ImmunityBio, Inc.

Attention: Secretary

1. Effective as of today, _____, 20__, the undersigned (the “Grantee”) hereby elects to exercise the Grantee’s option to purchase _____ shares of the Common Stock (the “Shares”) of ImmunityBio, Inc., (the “Company”) under and pursuant to the Company’s Amended and Restated 2015 Stock Incentive Plan, as amended from time to time (the “Plan”) and the [] Incentive [Non-Qualified Stock Option Award Agreement (the “Option Agreement”) and Notice of Stock Option Award (the “Notice”) dated _____, 20__. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Exercise Notice.

2. Representations of the Grantee. The Grantee acknowledges that the Grantee has received, read and understood the Notice, the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

3. Rights as Shareholder. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Shares, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 10 of the Plan.

The Grantee shall enjoy rights as a shareholder until such time as the Grantee disposes of the Shares or the Company and/or its assignee(s) exercises the Right of First Refusal or the Repurchase Right. Upon such exercise, the Grantee shall have no further rights as a holder of the Shares so purchased except the right to receive payment for the Shares so purchased in accordance with the provisions of the Option Agreement, and the Grantee shall forthwith cause the certificate(s) evidencing the Shares so purchased to be surrendered to the Company for transfer or cancellation.

4. Delivery of Payment. The Grantee herewith delivers to the Company the full Exercise Price for the Shares, which, to the extent selected, shall be deemed to be satisfied by use of the broker-dealer sale and remittance procedure to pay the Exercise Price provided in Section 4(d) of the Option Agreement.

5. Tax Consultation. The Grantee understands that the Grantee may suffer adverse tax consequences as a result of the Grantee’s purchase or disposition of the Shares. The Grantee represents that the Grantee has consulted with any tax consultants the Grantee deems advisable in connection with the purchase or disposition of the Shares and that the Grantee is not relying on the Company for any tax advice.

6. Taxes. The Grantee agrees to satisfy all applicable federal, state and local income and employment tax withholding obligations and herewith delivers to the Company the full amount of such obligations or has made arrangements acceptable to the Company to satisfy such obligations. In the case of an Incentive Stock Option, the Grantee also agrees, as partial consideration for the designation of the Option as an Incentive Stock Option, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of the Option if such disposition occurs within two (2) years from the Date of Award or within one (1) year from the date the Shares were transferred to the Grantee.

7. Restrictive Legends. The Grantee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by the Company or by state or federal securities laws:

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THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER, A RIGHT OF FIRST REFUSAL AND A REPURCHASE RIGHT HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE OPTION AGREEMENT BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS, RIGHT OF FIRST REFUSAL AND REPURCHASE RIGHT ARE BINDING ON TRANSFEREES OF THESE SHARES.

8. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon the Grantee and his or her heirs, executors, administrators, successors and assigns.

9. Construction. The captions used in this Exercise Notice are inserted for convenience and shall not be deemed a part of this agreement for construction or interpretation. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

10. Administration and Interpretation. The Grantee hereby agrees that any question or dispute regarding the administration or interpretation of this Exercise Notice shall be submitted by the Grantee or by the Company to the Administrator. The resolution of such question or dispute by the Administrator shall be final and binding on all persons.

11. Governing Law; Severability. This Exercise Notice is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Should any provision of this Exercise Notice be determined by a court of law to be illegal or unenforceable, such provision shall be enforced to the fullest extent allowed by law and the other provisions shall nevertheless remain effective and shall remain enforceable.

12. Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, upon deposit for delivery by an internationally recognized express mail courier service or upon deposit in the United States mail by certified mail (if the parties are within the United States), with postage and fees prepaid, addressed to the other party at its address as shown below beneath its signature, or to such other address as such party may designate in writing from time to time to the other party.

13. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this agreement.

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14. Entire Agreement. The Notice, the Plan and the Option Agreement are incorporated herein by reference and together with this Exercise Notice constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Grantee with respect to the subject matter hereof, and may not be modified adversely to the Grantee's interest except by means of a writing signed by the Company and the Grantee. Nothing in the Notice, the Plan, the Option Agreement and this Exercise Notice (except as expressly provided therein) is intended to confer any rights or remedies on any persons other than the parties.

Submitted by:
GRANTEE:

(Signature)

Address:

Accepted by:
IMMUNITYBIO, INC.

By: _____
Title: _____

Address:

EXHIBIT B

AMENDED AND RESTATED IMMUNITYBIO, INC. 2015 STOCK INCENTIVE PLAN

INVESTMENT REPRESENTATION STATEMENT

GRANTEE: _____
COMPANY: IMMUNITYBIO, INC.
SECURITY: COMMON STOCK
AMOUNT: _____
DATE: _____

In connection with the purchase of the above-listed Securities, the undersigned Grantee represents to the Company the following:

(a) Grantee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Grantee is acquiring these Securities for investment for Grantee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(b) Grantee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon among other things, the bona fide nature of Grantee's investment intent as expressed herein. Grantee further understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Grantee further acknowledges and understands that the Company is under no obligation to register the Securities. Grantee understands that the certificate evidencing the Securities will be imprinted with a legend which prohibits the transfer of the Securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company.

(c) Grantee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Grantee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, except in the case of affiliates, such Securities may be resold subject to the satisfaction of the applicable conditions specified by Rule 144, including: (1) the availability of certain public information about the Company, (2) the amount of Securities being sold during any three month period not exceeding specified limitations, (3) the resale being made in an unsolicited "broker's transaction," in transactions

directly with a "market maker" or "riskless principal transactions" (as said terms are defined under the Securities Exchange Act of 1934) and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of the grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which may require: the availability of current public information about the Company; the resale to occur more than a specified period after the purchase and full payment (within the meaning of Rule 144) for the Securities; and, in the case of the sale of Securities by an affiliate, the satisfaction of the conditions set forth in sections (2), (3) and (4) of the paragraph immediately above.

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(d) Grantee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Grantee understands that no assurances can be given that any such other registration exemption will be available in such event.

(e) Grantee represents that Grantee is a resident of the state of _____

Grantee:

Signature

Date: _____

PART II**INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the expenses in connection with this registration statement. All of the amounts shown are estimates, except for the SEC registration fee.

SEC registration fee	\$ — (1)
Printing and engraving expenses	5,000(2)
Accounting fees and expenses	11,000(2)
Legal fees and expenses	25,000(2)
Miscellaneous expenses	10,000(2)
Total	<u>\$51,000(2)</u>

1 Previously paid.

2 Estimate.

Item 15. Indemnification of Directors and Officers.***Delaware Law and Our Governing Documents***

Our Amended and Restated Certificate of Incorporation, as amended (the “Charter”), and our Amended and Restated Bylaws, as amended (the “Bylaws”), provide that we shall indemnify, to the fullest extent authorized by the Delaware General Corporation Law (the “DGCL”), each person who is involved in any litigation or other proceeding because such person is or was a director or officer of the Company or is or was serving as an officer or director of another entity at our request, against all expense, loss or liability reasonably incurred or suffered in connection therewith. Our Charter provides that the right to indemnification includes the right to be paid expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that such advance payment will only be made upon delivery to us of an undertaking, by or on behalf of the director or officer, to repay all amounts so advanced if it is ultimately determined that such director is not entitled to indemnification. If we do not pay a proper claim for indemnification in full within sixty (60) days after we receives a written claim for such indemnification, except in the case of a claim for an advancement of expenses, in which case such period is twenty (20) days, our Charter and Bylaws authorize the claimant to bring an action against us and prescribe what constitutes a defense to such action.

Section 145 of the DGCL permits a corporation to indemnify any director or officer of the corporation against expenses (including attorney’s fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (*i.e.*, one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

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The rights conferred in our Charter and Bylaws are not exclusive, and we are authorized to enter into indemnification agreements with our directors, officers, employees and agents and to obtain insurance to indemnify such persons.

Pursuant to Section 102(b)(7) of the DGCL, our Charter eliminates the liability of a director to the Company or our stockholders for monetary damages for such a breach of fiduciary duty as a director, except for liabilities arising:

- from any breach of the director's duty of loyalty to the Company or our stockholders;
- from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the DGCL; or
- from any transaction from which the director derived an improper personal benefit.

Indemnification Agreements

We have entered into or plan to enter into indemnification agreements with each of our officers and directors. These indemnification agreements require or will require us to indemnify our directors and executive officers to the fullest extent permitted by Delaware law.

Insurance

We carry insurance policies insuring our directors and officers against certain liabilities that they may incur in their capacity as directors and officers. The effect of these policies is to indemnify our directors and officers against expenses, judgments, attorney's fees and other amounts paid in settlements incurred by officers and directors for acting in their capacity as such.

Item 16. Exhibits.

A list of exhibits filed herewith is contained in the Exhibit Index that immediately precedes such exhibits and is incorporated by reference herein.

Item 17. Undertakings.

- (a) 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;

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

provided, however, that the undertakings set forth in paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:
 - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

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- (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
 - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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.

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- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, 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.

[Table of Contents](#)**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Filed with this Report</u>	<u>Incorporated by Reference herein from Form or Schedule</u>	<u>Filing Date</u>	<u>SEC File/Reg Number</u>
	Plans Related to Acquisitions, Reorganizations, Arrangements, Liquidations or Successions				
2.1#	Agreement and Plan of Merger, dated December 21, 2020, by and among ImmunityBio, Inc. (f/k/a NantKwest, Inc.), NantCell, Inc. (f/k/a ImmunityBio, Inc.) and Nectarine Merger Sub, Inc.		Form 8-K (Exhibit 2.1)	12/22/2020	001-37507
	Instruments Defining Security Holders' Rights				
4.1	Specimen Stock Certificate.	X			
	Legal Opinions				
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.	X			
	Consents and Power of Attorney				
23.1	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (included in the opinion filed as Exhibit 5.1).	X			
23.2	Consent of Ernst & Young LLP, Independent Auditors.	X			
23.3	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm	X			
23.4	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm	X			
24.1	Power of Attorney (included on the signature page to this Post-Effective Amendment on Form S-3 to Registration Statement on Form S-4).	X			
	Additional Exhibits				
99.1	Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan, and forms of agreements thereunder.		Form S-4 (Exhibit 10.14)	01/19/2021	333-252232

Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. ImmunityBio, Inc. hereby undertakes to furnish supplementally copies of any of the omitted schedules upon request by the Securities and Exchange Commission.

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-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California on May 21, 2021.

IMMUNITYBIO, INC.

By: /s/ Richard Adcock

Name: Richard Adcock

Title: Chief Executive Officer and President

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Richard Adcock and David Sachs, severally, each with full power to act alone and without the others, his true and lawful attorney-in-fact, with full power of substitution, and with the authority to execute in the name of each such person, any and all amendments (including without limitation, post-effective amendments) to this registration statement, to sign any and all additional registration statements relating to the same offering of securities as this registration statement that are filed pursuant to Rule 462(b) of the Securities Act, and to file such registration statements with the SEC, together with any exhibits thereto and other documents therewith, necessary or advisable to enable the registrant to comply with the Securities Act, and any rules, regulations and requirements of the SEC in respect thereof, which amendments may make such other changes in the registration statement as the aforesaid attorney-in-fact executing the same deems appropriate.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Richard Adcock</u> Richard Adcock	Chief Executive Officer, President and Director (Principal Executive Officer)	May 21, 2021
<u>/s/ David Sachs</u> David Sachs	Chief Financial Officer, Treasurer and Secretary (Principal Financial Officer and Principal Accounting Officer)	May 21, 2021
<u>/s/ Patrick Soon-Shiong</u> Patrick Soon-Shiong	Executive Chairman of the Board of Directors	May 21, 2021
<u>/s/ Barry J. Simon</u> Barry J. Simon	Director	May 21, 2021
<u>/s/ Michael D. Blaszyk</u> Michael D. Blaszyk	Director	May 21, 2021
<u>/s/ Cheryl Cohen</u>	Director	May 21, 2021
<u>/s/ Christobel Selecky</u> Christobel Selecky	Director	May 21, 2021
<u>/s/ John Brennan</u> John Brennan	Director	May 21, 2021
<u>/s/ Wesley Clark</u> Wesley Clark	Director	May 21, 2021
<u>/s/ Linda Maxwell</u> Linda Maxwell	Director	May 21, 2021

PROOF

PROOF

NUMBER

SHARES

IMMUNITYBio, Inc.

COMMON STOCK

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 45256X 10 3

THIS CERTIFIES THAT:

PROOF

IS THE OWNER OF

FULLY PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF \$0.0001 PAR VALUE EACH OF

IMMUNITYBio, Inc.

transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate duly endorsed. This certificate and the shares represented hereby are subject to the laws of the State of Delaware, and to the Certificate of Incorporation and Bylaws of the Corporation, as now in effect or as hereafter amended.

This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

DATED:



A handwritten signature in black ink, appearing to read "D. Cook".

CHIEF EXECUTIVE OFFICER / PRESIDENT

AUTHORIZED SIGNATURE

CO-LEAD REGISTRAR AND REGISTERED
 BROKER/DEALER
 BROKER/DEALER
 TRANSFER AGENT AND REGISTRAR

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER, UPON REQUEST AND WITHOUT CHARGE, A FULL STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, SO FAR AS THE SAME HAVE BEEN DETERMINED, AND OF THE AUTHORITY, IF ANY, OF THE BOARD TO DIVIDE THE SHARES INTO CLASSES OR SERIES AND TO DETERMINE AND CHANGE THE RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF ANY CLASS OR SERIES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT NAMED ON THIS CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT	-Custodian.....
TEN ENT	- as tenants by the entireties		(Cust) (Minor)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act.....
			(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____ Shares of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Signature(s) Guaranteed

By _____
The Signature(s) must be guaranteed by an eligible guarantor institution (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions with membership in an approved Signature Guarantee Medallion Program), pursuant to SEC Rule 17Ad-15.



WILSON SONSINI GOODRICH & ROSATI
PROFESSIONAL CORPORATION
12235 EL CAMINO REAL
SAN DIEGO, CA 92130-3002
O: 858-350-2300
F: 858-350-2399

May 21, 2021

ImmunityBio, Inc.
3530 John Hopkins Court
San Diego, California 92121

Re: Post-Effective Amendment on Form S-3

Ladies and Gentlemen:

We have examined the Post-Effective Amendment on Form S-3 to the Registration Statement on Form S-4 (the "**Post-Effective Amendment**") to be filed by ImmunityBio, Inc., a Delaware corporation (the "**Company**"), with the Securities and Exchange Commission on or about the date hereof, relating to the registration under the Securities Act of 1933, as amended, of an aggregate of 1,094,377 shares (the "**Shares**") of the Company's common stock, par value \$0.001 per share, to be issued under the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan and forms of agreements thereunder (the "**Plan**").

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when issued and sold in the manner referred to in the Plan and pursuant to the agreements that accompany the Plan, will be legally and validly issued, fully paid, and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

Consent of Independent Auditors

We consent to the reference to our firm under the caption “Experts” in the Registration Statement (Post-Effective Amendment No. 1 on Form S-3 to Form S-4) and related Prospectus of ImmunityBio, Inc. for the registration of 1,094,377 shares of common stock issuable under the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan and to the incorporation by reference therein of our report dated March 30, 2021, with respect to the consolidated financial statements of NantCell, Inc. (fka ImmunityBio, Inc., a private company) included in ImmunityBio, Inc.’s Current Report on Form 8-K/A dated April 22, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Los Angeles, California
May 21, 2021

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” in the Registration Statement (Post-Effective Amendment No. 1 on Form S-3 to Form S-4) and related Prospectus of ImmunityBio, Inc. for the registration of 1,094,377 shares of common stock issuable under the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan and to the incorporation by reference therein of our report dated April 22, 2021, with respect to the combined consolidated financial statements of ImmunityBio, Inc. included in ImmunityBio, Inc.’s Current Report on Form 8-K/A dated April 22, 2021, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Los Angeles, California
May 21, 2021

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” in the Registration Statement (Post-Effective Amendment No. 1 on Form S-3 to Form S-4) and related Prospectus of ImmunityBio, Inc. for the registration of 1,094,377 shares of common stock issuable under the Amended and Restated ImmunityBio, Inc. 2015 Stock Incentive Plan and to the incorporation by reference therein of our report dated March 4, 2021, with respect to the consolidated financial statements of NantKwest, Inc. included in NantKwest, Inc.’s Annual Report (Form 10-K) for the year ended December 31, 2020, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Los Angeles, California
May 21, 2021