
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)
March 7, 2018

BioXcel Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-38410
(Commission File Number)

82-1386754
(I. R. S. Employer
Identification No.)

**780 East Main Street
Branford, CT 06405**
(Address of principal executive offices, including ZIP code)

(203) 643-8060
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

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

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

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

Emerging growth company

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

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

On March 7, 2018, BioXcel Therapeutics, Inc. (the "**Company**"), entered into an executive employment agreement with Vimal Mehta, the Company's Chief Executive Officer in connection with the Company's initial public offering (the "**IPO**"). The term of the agreement will continue for a period of 2 years from the date of execution and automatically renews for successive one year periods at the end of each term until either party delivers written notice of their intent not to review at least 90 days prior to the expiration of the then effective term. Dr. Mehta's base salary was increased to \$450,000 per year upon

completion of the Company's initial public offering, or the IPO. Dr. Mehta is eligible to receive an annual bonus of up to 50% of his base salary per year at the discretion of the compensation committee of the Company, as well as a special bonus of \$90,000 payable upon completion of the IPO. Dr. Mehta is entitled to participate in any and all benefit plans, from time to time, in effect for senior management, along with vacation, sick and holiday pay in accordance with the Company's policies established and in effect from time to time. The agreement may be terminated by the Company at any time and for any reason (or no reason), and with or without cause, provided if the agreement is terminated without cause, the Company is required to provide Dr. Mehta at least 90 days prior written notice. Dr. Mehta may terminate the agreement for any reason (or no reason) upon 90 days prior written notice. If the employment agreement is terminated by the Company other than for cause or if Dr. Mehta terminates his employment for good reason, which includes a change of control, Dr. Mehta shall receive (i) a pro-rated bonus for the year in which such termination became effective, (ii) continued payment of his base compensation during the 24 month period following termination; (iii) immediate vesting of 50% all unvested equity awards held immediately prior to his termination date and (iv) payment of the cost of medical insurance for a period of 18 months following termination. If the Company terminates Dr. Mehta's employment and a change of control is either consummated (i) within 6 months of the effective date of such termination or (ii) no more than 12 months prior to the effective date of such termination, Dr. Mehta shall be entitled to receive a lump sum payment equal to 24 months of his base compensation. The employment agreement also contains covenants: (i) restricting the executive from engaging in any activity competitive with our business during the term of the employment agreement and for a period of one year thereafter; (ii) prohibiting the executive from disclosing confidential information regarding us; and (iii) soliciting our suppliers, employees, customers and prospective customers during the term of the employment agreement and for a period of one year thereafter.

The foregoing description of the employment agreement is qualified in its entirety by reference to the full text of the employment agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

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

On March 7, 2018, Company filed an amended and restated certificate of incorporation (the "**Restated Certificate**") with the Secretary of State of the State of Delaware in connection with the closing of the IPO. As described in the Registration Statement on Form S-1 (File No. 333-222324), as amended, the Company's board of directors and stockholders previously approved the Restated Certificate in connection with the Company's initial public offering.

The foregoing description of the Restated Certificate is qualified in its entirety by reference to the full text of the Restated Certificate, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

On March 12, 2018, in connection with the closing of the IPO, the amended and restated bylaws of the Company (the "**Amended and Restated Bylaws**"), which were previously approved by the Company's board of directors and stockholders, became effective. The Amended and Restated Bylaws restate the Company's bylaws in their entirety to, among other things: (i) eliminate the ability of the Company's stockholders to take action by written consent in lieu of a meeting and call special meetings of stockholders; (ii) establish procedures relating to the presentation of stockholder proposals at stockholder meetings; (iii) establish procedures relating to the nomination of directors; and (iv) conform to the provisions of the Restated Certificate.

The foregoing description of the Amended and Restated Bylaws is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, a copy of which is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

Item 8.01 Other Events.

On March 12, 2018, the Company completed the IPO and sold 5,454,545 shares of its common stock at a price to the public of \$11.00 per share. A copy of the press release announcing the pricing of the initial public offering is attached hereto as Exhibit 99.1 and is incorporated herein by reference, and a copy of the press release announcing the closing of the initial public offering is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

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Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Certificate of Incorporation.
3.2	Amended and Restated Bylaws
10.1	Executive Employment Agreement, by and between BioXcel Therapeutics, Inc. and Vimal Mehta
99.1	Press release, dated March 8, 2018.
99.2	Press release, dated March 12, 2018.

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SIGNATURES

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

Date: March 12, 2018

BioXcel Therapeutics, Inc.

/s/ Vimal Mehta
Vimal Mehta
Chief Executive Officer

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BIOXCEL THERAPEUTICS, INC.**

BIOXCEL THERAPEUTICS, INC. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify as follows:

A. The name of the Corporation is BioXcel Therapeutics, Inc.

B. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 29, 2017 under the name BioXcel Therapeutics, Inc.

C. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

D. The Certificate of Incorporation of the Corporation, is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is BioXcel Therapeutics, Inc. (the "Corporation")

SECOND: The address of the Corporation's registered office in the state of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808. The name of the registered agent at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (the "DGCL").

FOURTH: The total number of shares of capital stock that the Corporation shall have authority to issue is 60,000,000 shares, consisting of 50,000,000 shares of common stock, par value \$0.001 per share (the "Common Stock"), and 10,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock").

4.1 Common Stock. A statement of the designations, powers, preferences, rights, qualifications, limitations and restrictions in respect to the shares of Common Stock is as follows:

(a) Dividends. The Board of Directors of the Corporation may cause dividends to be paid to the holders of shares of Common Stock out of funds legally available for the payment of dividends by declaring an amount per share as a dividend. When and as dividends are declared on the Common Stock, whether payable in cash, in

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property or in shares of stock or other securities of the Corporation, the holders of Common Stock shall be entitled to share ratably according to the number of shares of Common Stock held by them, in such dividends.

(b) Liquidation Rights. Subject to the terms of any resolution or resolutions adopted by the Board of Directors pursuant to Section 4.2 of this ARTICLE FOURTH, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of Common Stock shall be entitled to share ratably, according to the number of shares of Common Stock held by them, in all remaining assets of the Corporation available for distribution to its stockholders.

(c) Voting Rights. Except as otherwise provided in this Certificate of Incorporation or required by applicable law, the holders of Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote, and each holder of Common Stock shall be entitled to one vote for each share of such stock held by him. Notwithstanding the foregoing, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any resolution adopted pursuant to Section 4.2 of this ARTICLE FOURTH relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any resolution adopted pursuant to Section 4.2 of this ARTICLE FOURTH relating to any series of Preferred Stock).

(d) Stock Split. Upon the filing and effectiveness of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time") each outstanding share (including shares held in treasury) of Common Stock of the Corporation (the "Old Common Stock") shall be automatically split up, reclassified and converted into 237 shares of Common Stock (the "New Common Stock"). This stock split of the outstanding shares of Common Stock shall not affect the total number of shares of Common Stock that the Corporation is authorized to issue, which shall remain as set forth in the first sentence of this ARTICLE FOURTH. The forward split of the Old Common Stock effected by the foregoing paragraph shall be referred to herein as the "Forward Split." The Forward Split shall occur without any further action on the part of the Corporation or the holders of shares of Old Common Stock or New Common Stock and whether or not certificates representing such holders' shares prior to the Forward Split are surrendered for cancellation. No fractional interest in a share of New Common Stock shall be deliverable upon the Forward Split. Stockholders who otherwise would have been entitled to receive any fractional interests in the New Common Stock, in lieu of receipt of such fractional interest, shall be entitled to receive from the Corporation an amount in cash equal to the fair value of such fractional interest as of the Effective Time. Except where the context otherwise requires, all references to "Common Stock" in this Certificate of Incorporation shall be to the New Common Stock. The Forward Split will be effected on a stockholder-by-stockholder (as opposed to certificate-by-certificate) basis. Certificates or book-entries dated as of a date prior to the Effective Time representing outstanding shares of Old Common Stock shall, immediately after the Effective Time, represent

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a number of shares equal to the same number of shares of New Common Stock as is reflected on the face of such certificates or book entries, multiplied by 237 and rounded up to the nearest whole number. The Corporation may, but shall not be obliged to, issue new certificates evidencing the shares of New Common Stock outstanding as a result of the Forward Split unless and until the certificates evidencing the shares held by a holder prior to the Forward Split are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. Every share number, dollar amount and other provision contained in this Amended and Restated Certificate of Incorporation have been adjusted for the Forward Split, and there shall be no further adjustments made to such share numbers, dollar amounts or other provisions, except in the case of any stock splits, stock dividends, reclassifications and the like occurring after the Effective Time.

4.2 Preferred Stock. The Board of Directors is authorized, subject to any limitation prescribed by law, to adopt one or more resolutions to provide for the issuance of the shares of Preferred Stock in one or more series, and by filing a certificate pursuant to applicable Delaware law to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the DGCL and without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any resolution adopted pursuant to this Section 4.2.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- (a) The number of shares constituting the series and the distinctive designation of the series;
- (b) The dividend rate (or the method of calculation of dividends) on the shares of the series, whether dividends will be cumulative, and if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series;
- (c) Whether the series shall have voting rights, in addition to the voting rights required by law, and if so, the terms of such voting rights;
- (d) Whether the series shall have conversion rights, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;
- (e) Whether or not the shares of that series shall be redeemable or exchangeable, and, if so, the terms and conditions of such redemption or exchange, as the

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case may be, including the date or dates upon or after which they shall be redeemable or exchangeable, as the case may be, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

- (f) Whether the series shall have a sinking fund for the redemption or purchase of shares of that series, and if so, the terms and amount of such sinking fund;
- (g) The rights of the shares of the series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights or priority, if any, of payment of shares of the series; and
- (h) Any other relative rights, preferences, powers and limitations of that series.

Except for any difference so provided by the Board of Directors, the shares of Preferred Stock will rank on parity with respect to the payment of dividends and to the distribution of assets upon liquidation.

FIFTH:

5.1 Location for Stockholder Meetings. Meetings of stockholders may be held within or outside the state of Delaware or may be held solely by means of remote communication in accordance with the DGCL.

5.2 Stockholder Action. Except as otherwise provided with respect to a series of Preferred Stock in a resolution or resolutions adopted by the Board of Directors pursuant to ARTICLE FOURTH, any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of such stockholders, and may not be effected by consent of stockholders in lieu of a meeting of stockholders.

5.3 Special Stockholders Meetings. Except as otherwise required by law, special meetings of the Corporation's stockholders may be called only by (i) the Board of Directors pursuant to a resolution approved by the affirmative vote of a majority of the directors then in office, (ii) the Chairman of the Board, if one is elected, or (iii) the Chief Executive Officer. Only those matters set forth in the notice, of the special meeting may be considered or acted upon at such special meeting, unless otherwise provided by law. Notwithstanding the foregoing, whenever holders of one or more series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of the resolution or resolutions adopted by the Board of Directors pursuant to ARTICLE FOURTH hereto, special meetings of holders of such Preferred Stock.

SIXTH:

6.1 Number of Directors. The number of directors of the Corporation shall be fixed from time to time by the vote of a majority of the entire Board of Directors, except as may be provided by the resolution or resolutions adopted by the Board of Directors of the Corporation in respect of Preferred Stock adopted pursuant to ARTICLE FOURTH hereto, but such number

shall in no case be less than one (1) nor more than fifteen (15). Any such determination made by the Board of Directors shall continue in effect unless and until changed by the Board of Directors, but no such changes shall affect the term of any directors then in office.

6.2 Term of Office; Vacancies. (b) Subject to Section 6.5 hereof, the Board of Directors shall be divided into three classes, as nearly equal in number as possible and designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II and Class III. The term of the initial Class I Directors shall expire at the first annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation, the term of the initial Class II Directors shall expire at the second annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation and the term of the initial Class III Directors shall expire at the third annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation. At each succeeding annual meeting of the stockholders of the Corporation, beginning with the first annual meeting of the stockholders of the Corporation following the effectiveness of this Amended and Restated Certificate of Incorporation, each of the successors elected to replace the class of directors whose term expires at that annual meeting shall be elected for a three-year term or until the election and qualification of their respective successors in office, subject to their earlier death, resignation or removal. Subject to Section 6.5 hereof, if the number of directors that constitutes the Board of Directors is changed, any increase or decrease shall be apportioned by the Board of Directors among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors constituting the Board of Directors shorten the term of any incumbent director. Subject to the rights of the holders of one or more series of Preferred Stock, voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. The Board of Directors is hereby expressly authorized, by resolution or resolutions thereof, to assign members of the Board of Directors already in office to the aforesaid classes at the time this Amended and Restated Certificate of Incorporation (and therefore such classification) becomes effective in accordance with the DGCL. Any vacancies and newly created directorships resulting from an increase in the number of directors shall be filled exclusively by a majority of the directors then in office, even if less than a quorum, and shall hold office until the next stockholder's meeting at which directors are elected and his successor is elected and qualified or until his earlier death, resignation, retirement, disqualification or removal from office.

6.3 Removal. Subject to Section 6.5 hereof, any or all of the directors may be removed from office at any time, but only for cause and only by the affirmative vote of holders of a majority of the voting power of all then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

6.4 No Written Ballot. Election of directors need not be by written ballot, unless the By-laws of the Corporation provide otherwise.

6.5 Preferred Stock Directors. Notwithstanding the foregoing, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of the resolution or resolutions adopted by the Board of Directors pursuant to ARTICLE FOURTH applicable thereto, and each director so elected shall not be subject to the provisions of this ARTICLE SIXTH unless otherwise provided therein.

SEVENTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(2) The Board of Directors shall have the power to make, alter, amend, change, add to or repeal the By-laws of the Corporation.

(3) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as maybe exercised or done by the Corporation; subject, nevertheless, to the provisions of the DGCL or this Certificate of Incorporation.

(4) Any action permitted or required to be taken by the Board of Directors pursuant to this Certificate of Incorporation may be taken by an authorized committee thereof, except as expressly prohibited by the DGCL or the By-laws.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

NINTH: The Corporation reserves the right to repeal, alter or amend this Certificate of Incorporation in the manner now or hereafter prescribed by statute.

TENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this

Corporation under Section 291 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 279 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ELEVENTH: The Corporation shall, to the fullest extent permitted by Section 145 of the DGCL, indemnify and advance expenses to (a) its directors and officers and (b) any person who at the request of the Corporation is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section as amended or supplemented (or any successor); provided, however, that, except with respect to proceedings to enforce rights to indemnification, the Corporation shall not indemnify any director, officer or such person in connection with a proceeding (or part thereof) initiated by such director, officer or such person unless such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The Corporation, by action of its Board of Directors, may provide indemnification or advance expenses to employees and agents of the Corporation or other persons only on such terms and conditions and to the extent determined by its Board of Directors in its sole and absolute discretion. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. No amendment to or repeal of this Article Eleventh shall adversely affect any right or protection of a director, officer or such other indemnified person of the Corporation existing at the time of, or increase the liability of any director, officer or such other indemnified person of the Corporation with respect to any acts or omissions of such director, officer or such other indemnified person occurring prior to, such amendment or repeal.

TWELFTH: The Corporation hereby renounces, to the fullest extent permitted by Section 122(17) of the DGCL, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any business opportunities that are presented to any of its directors or stockholders who are not otherwise employed by the Corporation other than business opportunities that are presented to any director or stockholder acting in his or her capacity as a director or stockholder of the Corporation. No amendment to or repeal of this Article Twelfth shall adversely affect any right or protection of a director or stockholder of this Corporation existing at the time of, or increase the liability of any director or stockholder of this Corporation with respect to any acts or omissions of such director or stockholder occurring prior to, such amendment or repeal.

THIRTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, all Internal Corporate Claims shall be brought solely and exclusively in the Court of Chancery of the State of Delaware (or, if such court does not have jurisdiction, the Superior Court of the State of Delaware, or, if such other court does not have jurisdiction, the United States District Court for the District of Delaware). "Internal Corporate Claims" means claims, including claims in the right of the Corporation, brought by a stockholder (including a beneficial owner) (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity or (ii) as to which the DGCL confers jurisdiction upon the Court of Chancery of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed on this 7th day of March, 2018.

By: /s/ Vimal Mehta
Name: Vimal Mehta
Title: Chief Executive Officer

BioXcel Therapeutics, Inc.

**Incorporated under the laws
of the State of Delaware**

BY-LAWS

March 12, 2018

AMENDED AND RESTATED

BY-LAWS

of

BioXcel Therapeutics, Inc.

PREAMBLE

These Amended and Restated By-laws are subject to, and governed by, the Delaware General Corporation Law (the “DGCL”) and the Amended and Restated Certificate of Incorporation of BioXcel Therapeutics, Inc., a Delaware corporation (the “Corporation”) (the “Certificate”). In the event of a direct conflict between the provisions of these By-laws and the mandatory provisions of the DGCL or the provisions of the Certificate, such provisions of the DGCL or the Certificate, as the case may be, will be controlling.

ARTICLE 1

Offices

SECTION 1.1 Office

The registered office of the Corporation in the State of Delaware shall be at the location determined from time to time by the Corporation’s Board of Directors (the “Board”), and the registered agent in charge thereof shall be as determined by the Board.

SECTION 1.2 Other Offices

The Corporation may also have an office or offices at any other place or places within or outside the State of Delaware.

ARTICLE 2

Meetings of Stockholders

SECTION 2.1 Annual Meetings

The annual meeting of the stockholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place (if any), date and hour as shall be fixed by the Board, within or without the State of Delaware, and designated in the notice or waiver of notice thereof.

SECTION 2.2 Special Meetings

Except as otherwise required by law, special meetings of the stockholders may be called only in accordance with the provisions of the Certificate.

SECTION 2.3 Notice of Meetings

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by the Certificate or applicable law, the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, notice is given when deposited in the

United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. When a meeting is adjourned to another time or place, unless these By-laws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting.

SECTION 2.4 Quorum

At each meeting of the stockholders, except where otherwise provided by the Certificate, these By-laws, or as otherwise required by law, the holders of at least one-third of the voting power of the issued and outstanding shares of stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate vote by a class or classes or series is required, the holders of at least one-third of the voting power of the issued and outstanding shares of such class or classes or series, present in person or by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. When a quorum is present or represented at any meeting, the affirmative vote of a majority of the votes cast affirmatively or negatively on a matter submitted for stockholder action shall decide such matter unless the matter is one upon which, by express provision of law, the Certificate, these By-laws or, with respect to a class or series of Preferred Stock, the terms of the resolution or resolutions adopted by the Board pursuant to ARTICLE FOURTH of the Certificate, a different vote is required, in which case such express provision shall govern and control the decision of such matter. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

SECTION 2.5 Organization

At each meeting of the stockholders, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (a) the Chairman;
- (b) the Chief Executive Officer;
- (c) any Vice President;
- (d) any officer of the Corporation designated by the Board to act as chairman of such meeting and to preside thereat; or
- (e) a stockholder of record who shall be chosen chairman of such meeting by the holders of a majority in voting power of the stock held by the stockholders present in person or by proxy and entitled to vote thereat.

The Secretary or, if he shall be presiding over such meeting in accordance with the provisions of this Section 5 or if he shall be absent from such meeting, the person (who shall be an Assistant Secretary, if an Assistant Secretary has been appointed and is present) whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

SECTION 2.6 Order of Business

Each of the chairman of the meeting and the Board shall have the authority to adopt and enforce rules providing for the orderly conduct of a stockholder meeting and the safety of those in attendance, including without limitation the authority to: (i) determine when the polls will open and close on items submitted for stockholder action; (ii) fix the time allotted for consideration of each agenda item and for questions and comments by persons in

attendance; (iii) adopt rules for determining who may pose questions and comments during the meeting; (iv) adopt rules for determining who may attend the meeting; and (v) adopt procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. The chairman of the meeting may adjourn or recess any meeting of stockholders, whether pursuant to these By-laws or otherwise, and notice of such adjournment or recess need be given only if required by law.

SECTION 2.7 Voting

Except as may otherwise be required by law or these By-laws, stockholders shall have the voting rights specified in the Certificate.

SECTION 2.8 Action by Stockholders

Any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of such stockholders and may not be effected by consent of stockholders in lieu of a meeting of stockholders.

SECTION 2.9 Voting Procedures and Inspection of Elections

(a) The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their

count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless Court of Chancery of the State of Delaware, upon application by a stockholder, shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Section 211(e) or Section 212(c)(2) of the DGCL, or any information provided pursuant to Section 211(a)(2)b.(i) or (iii) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted in this Section 9, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this Section 9 shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

SECTION 2.10 Advance Notification of Proposals at Stockholders' Meetings

(a) Annual Meeting.

(i) Nominations of persons for election to the Board and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to, and in accordance with, the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board or any authorized committee thereof or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 10 is delivered to the Secretary, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 10(a). For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make director nominations or propose other business (other than a proposal included in the Corporation's proxy materials pursuant to and in compliance with Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), at an annual meeting of stockholders.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary and, in the case of business other than nominations, such business must be a proper subject for stockholder action and the stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made, must have acted in accordance with the representations set forth in the Solicitation Statement required by these By-laws. To be timely under this Section 10(a), a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the Close of Business (as defined below) on the 90th day nor earlier than the Close of Business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the Close of Business on the 120th day prior to such annual meeting and not later than the Close of Business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which Public Announcement (as defined in Section 10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice has been given or with respect to which there has been a Public Announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or reelection to the Board (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, and (2) the information required to be submitted by nominees pursuant to Section 11 of this Article II;

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

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

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

(2) the number of shares of Common Stock and any series of Preferred Stock which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the number of shares of Common Stock and any series of Preferred Stock owned of record by the stockholder and such beneficial owner as of the record date for the meeting (except as otherwise provided in Section 10(a) (iii) below), and

(3) a representation that the stockholder intends to appear in person or by proxy at the meeting to make such nomination or propose such business;

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

(1) the number of shares of Common Stock and any series of Preferred Stock which are Beneficially Owned (as defined in Section 10(c)(ii) below) by such stockholder or beneficial owner and by any Control Person as of the date of the notice, and the stockholder’s agreement to notify the Corporation in writing within five business days after the record date for such meeting of the number of shares of Common Stock and any series of Preferred Stock Beneficially Owned by such stockholder or beneficial owner and by any Control Person as of the record date for the meeting (except as otherwise provided in Section 10(a)(iii) below),

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or Control Person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and the stockholder’s agreement to notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 10(a)(iii) below),

(3) a description of any agreement, arrangement or understanding (including without limitation any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder’s notice by, or on behalf of, such stockholder, beneficial owner or Control Person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of the Common Stock or any series of Preferred Stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or Control Person with respect to any Common Stock or any series of Preferred Stock, and the stockholder’s agreement to notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting (except as otherwise provided in Section 10(a)(iii) below),

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation within the meaning of Exchange Act Rule 14a-1(l) with respect to the nomination or other business and, if so, the name of each participant (as defined in Item 4 of Exchange Act Schedule 14A) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Common Stock or any series of Preferred Stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder (a “Solicitation Statement”).

(iii) Notwithstanding anything in Section 10(a)(ii) above or Section 10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder’s notice required by this Section 10 shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the business day immediately preceding the date of the annual meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 10(a), and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(b) Special Meeting.

Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation’s notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation’s notice of meeting (i) by or at the direction of the Board or any authorized committee thereof or (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 10(b) is delivered to the Secretary, who is entitled to vote at the meeting and upon such election and who delivers a written notice setting forth the information required by Section 10(a) above. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation’s notice of meeting, if the notice required by this Section 10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the Close of Business on the 120th day prior to such special meeting and not later than the Close of Business on the later of the 90th day prior to such special meeting or the 10th day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder’s notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in Section 10(a)(i) and Section 10(b) above shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in Section 10(a)(i) above. Except as otherwise required by law, each of the Board or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 10. If any proposed nomination or other business is not in compliance, then, except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 10, unless otherwise required by law or otherwise determined by the chairman of the meeting or the Board, if the stockholder does not provide the information required under clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 10 to the Corporation within the time frames specified herein, or if the stockholder (or a Qualified Representative of the stockholder (as defined below)) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 10, to be considered a “Qualified Representative” of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the making of such

nomination or proposal at such meeting by such stockholder stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 10, the “Close of Business” shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and a “Public Announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 10, shares shall be treated as “Beneficially Owned” by a person if the person beneficially owns such shares, directly or indirectly, within the meaning of Exchange Act Rule 13d-3, or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the right to vote such shares, alone or in concert with others and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

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SECTION 2.11 Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver to the Secretary at the principal executive offices of the Corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and (if applicable) to being named in the Corporation’s proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the Corporation; or (2) that could limit or interfere with the person’s ability to comply, if elected as a director, with such person’s fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; and (D) if elected as a director, will comply with all of the Corporation’s corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which will be provided to such person promptly following a request therefor); and

(ii) all completed and signed questionnaires required of the Corporation’s directors (which will be provided to such person promptly following a request therefor).

(b) A nominee for election or re-election as a director of the Corporation shall also provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Corporation to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) Notwithstanding any other provision of these By-laws, if a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 10 of this Article II, the questionnaires described in Section 11(a)(ii) above and the additional information described in Section 11(b) above shall be considered timely if provided to the Corporation promptly upon request by the Corporation, but in any event within five business days after such request, and all information provided pursuant to this Section 11 shall be deemed part of the stockholder’s notice submitted pursuant to Section 10 of this Article II.

SECTION 2.12 Advisory Stockholder Votes

In order for the stockholders to adopt or approve any precatory proposal submitted to them for the purpose of requesting the Board to take certain actions, a majority of the outstanding stock of the Corporation entitled to vote thereon must be voted in favor of the proposal.

SECTION 2.13 List of Stockholders

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 12 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours,

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at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

SECTION 3.1 General Powers

The business, property and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate directed or required to be exercised or done by the stockholders.

SECTION 3.2 Number and Term of Office

The number of directors shall be fixed in accordance with the Certificate. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death, resignation, retirement, disqualification or removal in the manner hereinafter provided. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

SECTION 3.3 Election of Directors

At each meeting of the stockholders for the election of directors at which a quorum is present, the persons receiving the greatest number of votes, up to the number of directors to be elected, of the stockholders present in person or by proxy and entitled to vote thereon, shall be the directors; provided that for purposes of such vote no stockholder shall be allowed to cumulate his votes.

SECTION 3.4 Resignation and Vacancies

Any director may resign at any time by giving written notice (or notice by electronic transmission) to the Board, the Chairman, the Chief Executive Officer or the Secretary. Such resignation shall take effect at the time specified therein (which may be upon the happening of an event or events specified therein) or, if the time be not specified, upon delivery thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Except as otherwise required by law, vacancies on the Board and newly created directorships will be filled in accordance with the Certificate.

SECTION 3.5 Meetings

(a) **Regular Meetings.** As soon as practicable after each annual election of directors, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 6 of this Article III.

(b) **Special Meetings.** Other meetings of the Board shall be held at such times and places as the Board, the Chairman, the Chief Executive Officer or any two directors shall from time to time determine.

(c) **Notice of Meetings.** Notice shall be given to each director for each regular and special meeting, including the time and place of such meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a meeting. Notice of each such meeting shall be mailed to each director, addressed to him at

his residence or usual place of business, at least two days before the date on which such meeting is to be held, or shall be sent to him at such place by telegraph, cable, wireless or other form of recorded communication or by electronic transmission, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held.

(d) **Place of Meetings.** The Board may hold its meetings at such place or places (if any) within or outside the State of Delaware as the Board may from time to time determine, or as shall be designated in the respective notices or waivers of notice thereof.

(e) **Quorum and Manner of Acting.** Directors comprising a majority of the total number of authorized directorships shall constitute a quorum for the transaction of business. All matters shall be determined by the affirmative vote of a majority of the directors present at a meeting at which a quorum is present. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present and no further notice thereof need be given.

(f) **Organization.** At each meeting of the Board, one of the following shall act as chairman of the meeting and preside thereat, in the following order of precedence:

- (1) the Chairman;
- (2) the Chief Executive Officer (if a director); or
- (3) a person designated by the Board.

The Secretary or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary has been appointed and is present) whom the chairman of the meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 3.6 Directors' Consent in Lieu of Meeting

Unless otherwise restricted by the Certificate or these By-laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this subsection at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

SECTION 3.7 Action by Means of Conference Telephone or Similar Communications Equipment

Any one or more members of the Board or any committee thereof, may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

SECTION 3.8 Committees

(a) The Board may designate one or more committees, each such committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not

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such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. The Board at any time may change the membership of any committee or amend or rescind the resolution designating the committee. Each committee shall keep a record of proceedings and report the same to the Board to such extent and in such form as the Board may require. Unless otherwise provided in the resolution designating a committee, a majority of all of the members of any such committee may select its Chairman, fix its rules or procedure, fix the time and place of its meetings and specify what notice of meetings, if any, shall be given. Any such committee, to the extent provided in the resolution of the Board, or in these By-laws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matter: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any by-law of the Corporation.

(b) A majority of the directors then serving on a committee of the Board shall constitute a quorum for the transaction of business by the committee, unless the Certificate or a resolution of the Board requires a greater or lesser number, provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee. The vote of the majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee, unless the Certificate or a resolution of the Board requires a greater number.

SECTION 3.9 Compensation

The Board shall have the authority to fix the compensation of directors, which may include their expenses, if any, of attendance at each meeting of the Board or of a committee.

SECTION 3.10 Preferred Stock Directors

Notwithstanding the foregoing, whenever the holders of one or more series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of the resolution or resolutions adopted by the Board pursuant to ARTICLE FOURTH of the Certificate applicable thereto, and each director so elected shall not be subject to the provisions of this ARTICLE III unless otherwise provided therein.

ARTICLE 4 Officers

SECTION 4.1 Executive Officers

The executive officers of the Corporation shall be determined by the Board and may include a Chairman, a Chief Executive Officer, a Chief Executive Officer, Senior Vice Presidents, Vice Presidents, a Secretary and a Treasurer, and also may include such other officers as the Board may appoint pursuant to Section 3 of this Article IV. Any two or more offices may be held by the same person.

SECTION 4.2 Authority and Duties

All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent so provided, by the Board.

SECTION 4.3 Other Officers

The Corporation may have such other officers, agents and employees as the Board may deem necessary, including one or more Assistant Secretaries, one or more Assistant Treasurers and one or more Vice Presidents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board, the Chairman,

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or the Chief Executive Officer may from time to time determine. The Board may delegate to any executive officer the power to appoint and define the authority and duties of, or remove, any such officers, agents or employees.

SECTION 4.4 Term of Office, Resignation and Removal

All executive officers shall be elected or appointed by the Board and shall hold office for such term as may be prescribed by the Board. Each executive officer shall hold office until his successor has been elected or appointed and qualified or until his earlier death or resignation or removal in the

manner hereinafter provided. The Board may require any executive officer to give security for the faithful performance of his duties.

Any officer may resign at any time by delivering written notice (or notice by electronic transmission) to the Board, the Chairman, the Chief Executive Officer or the Secretary. Such resignation shall take effect at the time specified therein (which may be upon the happening of an event or events specified therein) or, if the time be not specified, at the time notice is given. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board with or without cause, subject to any agreements to the contrary.

SECTION 4.5 Vacancies

If the office of Chairman, Chief Executive Officer, Secretary or Treasurer becomes vacant for any reason, the Board shall fill such vacancy, and if any other office becomes vacant, the Board may fill such vacancy. Except as otherwise provided in these By-laws, any officer so appointed or elected by the Board shall serve only until such time as the unexpired term of his predecessor shall have expired and until his successor shall have been duly elected and qualified, unless reelected or reappointed by the Board.

SECTION 4.6 The Chairman

The Chairman of the Board shall perform such duties as shall be assigned to him by the Board from time to time.

SECTION 4.7 The Chief Executive Officer

In the event that the office of Chairman is or becomes vacant, the chief executive officer of the Corporation shall act as Chairman. The Chief Executive Officer shall have general charge and supervision of the operation of the business and affairs of the Corporation. The Chief Executive Officer may authorize, execute and deliver, for and on behalf of the Corporation, deeds, mortgages, bonds, contracts, or other instruments, except when the signing and execution thereof have been expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation or are required by law to be otherwise signed or executed by some other officer or in some other manner. He shall from time to time make such reports of the affairs of the Corporation as the Board may require and shall perform all other duties incident to the office of Chief Executive Officer and such other duties as may from time to time be assigned to him by the Board or the Chairman.

SECTION 4.8 Senior Vice President or Vice President

In the event of the death of the Chief Executive Officer or his or her inability to act, the Senior Vice President or Vice President, if any (or if there is more than one Senior Vice President or Vice President, the Senior Vice President or Vice President who was designated by the Board as the successor to the Chief Executive Officer, or if no Senior Vice President or Vice President is so designated, the Senior Vice President first elected to such office or if there is no Senior Vice President, the Vice President first elected to such office) shall perform the duties of the Chief Executive Officer, except as may be limited by resolution of the Board, with all the powers of and subject to all the restrictions upon the Chief Executive Officer. Senior Vice Presidents or Vice Presidents shall have, to the extent authorized by the Chief Executive Officer or the Board, the same powers as the Chief Executive Officer to authorize, execute and deliver, for and on behalf of the Corporation, deeds, mortgages, bonds, contracts,

or other instruments. Senior Vice President or Vice Presidents shall perform all other duties incident to the office of Senior Vice President or Vice President and such other duties as from time to time may be assigned to them by the Chief Executive Officer or by the Board. The Board may name any Senior Vice President or Vice President as the Chief Operating Officer, Chief Financial Officer or similar title.

SECTION 4.9 The Secretary

The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of the stockholders and shall record, or cause to be recorded, the minutes of all proceedings in a book to be kept for that purpose. He may give, or cause to be given, notice of all meetings of the stockholders and of the Board, and shall perform such other duties as may be prescribed by the Board, the Chairman or the Chief Executive Officer, under whose supervision he shall act. He shall keep, or cause to be kept, in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it may be attested by his signature or by the signature of the Treasurer or, if appointed, an Assistant Secretary or an Assistant Treasurer. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest such affixing of the seal. He shall keep in safe custody the certificate books and stockholder records, including registers of the post office address of each stockholder and director, and such other books and records as the Board may direct, and shall perform all other duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman or the Chief Executive Officer.

SECTION 4.10 The Treasurer

The Treasurer shall supervise and be responsible for the care and custody of the corporate funds and other valuable effects, including securities, and shall keep, or cause to be kept, full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chairman, the Chief Executive Officer and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation, and shall perform all other duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board, the Chairman or the Chief Executive Officer.

ARTICLE 5

Contracts, Checks, Drafts, Bank Accounts, Etc.

SECTION 5.1 Execution of Documents

The Board shall designate, by either specific or general resolution, the officers, employees and agents of the Corporation who shall have the power to authorize, execute and deliver, for and on behalf of the Corporation, deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to subdelegate) by written instrument to other officers, employees or agents of the Corporation; and, unless so designated or expressly authorized by these By-laws, no officer, employee or agent shall have any power or authority to bind the Corporation by any contract or engagement, to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

SECTION 5.2 Deposits

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or Treasurer, or any other officer of the Corporation to whom power in this respect shall have been given by the Board, shall select.

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SECTION 5.3 Proxies in Respect of Stock or Other Securities of Other Corporations

The Board shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent in respect of such stock or securities. Such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights, and such designated officers may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its said powers and rights.

ARTICLE 6

Shares and Their Transfer; Fixing Record Date; Waiver of Notice

SECTION 6.1 Certificates for Shares

Subject to Section 6.2, every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him in the Corporation, which shall be in such form as shall be prescribed by the Board. Each certificate for shares shall be numbered and issued in consecutive order. Certificates of stock in the Corporation, if any, shall be signed, either manually or in facsimile by two of the Chairman, the Chief Executive Officer, any Vice President, the Treasurer (or an Assistant Treasurer, if appointed), the Secretary (or an Assistant Secretary, if appointed) or any other authorized officers of the Corporation. Where a certificate is countersigned by a transfer agent, other than the Corporation or an employee of the Corporation, or by a registrar, the signatures of the Chairman or the Chief Executive Officer or a Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were such officer, transfer agent or registrar at the date of its issue. All certificates shall include written notice of any restrictions which may be imposed on the transferability of shares.

SECTION 6.2 Shares without Certificates

The Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Within a reasonable time after the issue or transfer of shares without certificates, the Corporation shall send the stockholder a written statement of the information required by law on the certificates. The written statement shall include written notice of any restrictions which may be imposed on the transferability of such shares.

SECTION 6.3 Transfer of Stock

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate of stock or uncertificated shares in place of any certificate therefor issued by the Corporation to the person entitled thereto, cancel the old certificate and record the transaction in its stock transfer books.

SECTION 6.4 Addresses of Stockholders

Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him.

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SECTION 6.5 Replacement

The Corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

SECTION 6.6 Regulations

The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

SECTION 6.7 Fixing Date for Determination of Stockholders of Record

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

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

SECTION 6.8 Waiver of Notice

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

ARTICLE 7

Seal

The corporate seal shall be in such form as may be approved from time to time by the Board. The seal may be used by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

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ARTICLE 8

Fiscal Year

The fiscal year of the Corporation shall be fixed by resolution of the Board.

ARTICLE 9

Indemnification and Insurance

SECTION 9.1 Right to Indemnification

Each person who was, is or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any threatened, pending or completed action, suit, claim or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, that being or having been a director or officer of the Corporation, he or she is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise (an "indemnitee"), whether the basis of a proceeding is alleged action in an official capacity or in any other capacity while serving as a director, officer, partner, trustee, employee or agent, shall be indemnified and held harmless, to the fullest extent permitted by Delaware law, by the Corporation against all losses, claims, damages (compensatory, exemplary, punitive or otherwise), liabilities and expenses (including attorneys' fees, costs, judgments, fines, ERISA excise taxes or penalties, amounts to be paid in settlement and any other expenses) actually and reasonably incurred or suffered by the indemnitee in connection with the proceeding, and the indemnification shall continue as to an indemnitee who has ceased to be a director or officer of the Corporation or a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Except as provided in Section 3 of this Article IX with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify the indemnitee in connection with a proceeding (or part of a proceeding) initiated by the indemnitee only if a proceeding (or part of a proceeding) was authorized or ratified by the Board. The right to indemnification conferred in this Article IX shall be a contract right. The intent of this Article IX is to grant each indemnitee the maximum indemnification and advancement of expenses as allowed by law, subject to the limitations expressly provided in this Article IX.

SECTION 9.2 Advancement of Expenses

The right to indemnification conferred in this Article IX shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding (or part thereof) in advance of its final disposition (an "advancement of expenses"). An advancement of expenses shall be made upon delivery to the Corporation of an undertaking (an "undertaking"), by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the indemnitee is not entitled to be indemnified.

SECTION 9.3 Right of Indemnitee to Bring Suit

If a claim under Sections 1 and 2 of this Article IX is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any

time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part, in any such suit or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of litigating the suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IX or otherwise shall be on the Corporation.

SECTION 9.4 Nonexclusivity of Rights

The right to indemnification and the advancement of expenses conferred in this Article IX shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of, the Certificate or By-laws of the Corporation, general or specific action of the Board or stockholders, contract or otherwise.

SECTION 9.5 Insurance, Contracts and Funding

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, partner, trustee, employee or agent of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Corporation would have the authority or right to indemnify the person against the expense, liability or loss under the DGCL or other law. The Corporation may enter into contracts with any director, officer, partner, trustee, employee or agent of the Corporation in furtherance of the provisions of this Article IX and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of the amounts as may be necessary to effect indemnification as provided in this Article IX.

SECTION 9.6 Indemnification of Employees and Agents of the Corporation

In addition to the rights of indemnification set forth in Section 1 of this Article IX, the Corporation may, by action of the Board, grant rights to indemnification and advancement of expenses to employees and agents or any class or group of employees and agents of the Corporation (a) with the same scope and effect as the provisions of this Article IX with respect to indemnification and the advancement of expenses of directors and officers of the Corporation, (b) pursuant to rights granted or provided by the DGCL, or (c) as are otherwise consistent with law.

SECTION 9.7 Persons Serving Other Entities

Any person who, while a director or officer of the Corporation, is or was serving (a) as a director, officer, employee or agent of another corporation of which a majority of the shares entitled to vote in the election of its directors is held by the Corporation or (b) as a partner, trustee or otherwise in an executive or management capacity in a partnership, joint venture, trust, employee benefit plan or other enterprise of which the Corporation or a majority owned subsidiary of the Corporation is a general partner or has a majority ownership, shall conclusively be deemed to be so serving at the request of the Corporation and entitled to indemnification and the advancement of expenses under Section 1 or 2 of this Article IX, respectively.

SECTION 9.8 Effect of Amendment or Repeal; Survival.

Any amendment, alteration or repeal of this Article IX that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal. The right to indemnification and advancement of expenses under this Article IX shall be construed as a contractual right of the indemnitees, shall continue as a vested contractual right, even if a person ceases to be a director or officer of the corporation, and shall inure to the benefit of an indemnitee's heirs, executors and administrators.

ARTICLE 10 Amendment

These By-laws may be altered, amended or repealed or new By-laws may be adopted by the Board or by the affirmative vote of the holders of a majority of the voting power of the issued and outstanding shares of stock of the Corporation.

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Agreement (the “Agreement”) is made and entered into effective as of March 7, 2018 (the “Effective Date”), by and between Vimal Mehta, Ph.D. (the “Executive”) and BioXcel Therapeutics, Inc., a Delaware corporation (the “Company”).

RECITALS

WHEREAS, the Company wishes to retain Executive as its Chief Executive Officer;

WHEREAS, the Company wishes to secure the services of Executive upon the terms and conditions hereinafter set forth, and Executive wishes to render such services to the Company upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

AGREEMENT

1. Definition of Terms. The following terms referred to in this Agreement shall have the following meanings:

(a) “Affiliate” means, with respect to any person, a person that directly or indirectly controls, is controlled by, or is under common control with such person.

(b) “Cause” shall mean any of the following: (i) a material breach or material default (including, without limitation, any material dereliction of duty) by Executive of this Agreement or any agreement between Executive and the Company, or a repeated failure by Executive to follow the lawful direction of the Company’s Board of Directors (the “Board”); (ii) Executive’s gross negligence, willful misfeasance or breach of fiduciary duty to the Company or its affiliates; (iii) the commission by Executive of an act or omission involving fraud, embezzlement, misappropriation or dishonesty in connection with Executive’s duties to the Company or its affiliates; or (iv) Executive’s conviction of, indictment for, or pleading guilty or *nolo contendere* to, any felony or other crime involving fraud or moral turpitude. For purposes of this subsection, no act or failure to act on Executive’s part shall be considered “willful” unless done, or omitted to be done, by Executive not in good faith and without reasonable belief that his action or omission was in the best interest of the Company. Any determination of whether Cause exists shall be made by the Board in its sole and absolute discretion. Provided, however, that before a termination for Cause pursuant to Section 1(b) is effective, Executive will be given written notice of the particular circumstances constituting the basis for the termination for Cause and thirty (30) calendar days to cure those particular circumstances (the “Executive’s Cure Period”). Any determination as to whether Executive successfully cured the circumstances at issue shall be made by the Board in its sole and absolute discretion. Failing such cure, Executive’s termination for Cause pursuant to Section 1(b) shall be effective on the day immediately following the expiration of Executive’s Cure Period.

(c) “Change of Control” shall mean the occurrence of any of the following

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events:

(i) the date on which any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) obtains “beneficial ownership” (as defined in Rule 13d-3 of the Exchange Act) or a pecuniary interest in fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities (“Voting Stock”);

(ii) the consummation of a merger, consolidation, reorganization, or similar transaction involving the Company, other than a transaction: (1) in which substantially all of the holders of the Voting Stock immediately prior to such transaction hold or receive directly or indirectly fifty percent (50%) or more of the voting stock of the resulting entity or a parent company thereof, in substantially the same proportions as their ownership of the Company immediately prior to the transaction; or (2) in which the holders of the Company’s capital stock immediately before such transaction will, immediately after such transaction, hold as a group on a fully diluted basis the ability to elect at least a majority of the authorized directors of the surviving entity (or a parent company); or

(iii) there is consummated a sale, lease, license or disposition of all or substantially all of the consolidated assets of the Company and its subsidiaries, other than a sale, lease, license or disposition of all or substantially all of the consolidated assets of the Company and its subsidiaries to an entity, fifty percent (50%) or more of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale, lease, license or disposition.

provided that, to the extent required to avoid taxes or penalties under Section 409A of the Internal Revenue Code, such event or transaction shall only constitute a Change in Control if it also constitutes a “change in control event” as defined in Treas. Reg. § 1.409A-3(i)(5)(i).

(d) “Disability” means a physical or mental disability, which prevents Executive from performing Executive’s duties under this Agreement for a period of at least 120 consecutive days in any twelve month period or 150 non consecutive days in any twelve month period.

(e) “Good Reason” shall mean without Executive’s express written consent any of the following: (i) a significant reduction of Executive’s duties, position or responsibilities relative to Executive’s duties, position or responsibilities in effect immediately prior to such reduction, or the removal of Executive from such position, duties or responsibilities; (ii) any action or inaction that constitutes a material breach by the Company or any successor to the Company of its obligations to Executive under this Agreement or any other agreement between Executive and the Company, or (iii) a relocation of Executive’s worksite by more than 25 miles. Provided, however, that before a termination for Good Reason pursuant to Section 1(e) is effective, Executive will provide the Company with written notice of the particular circumstances constituting the basis for his termination with Good Reason within ninety (90) following the initial occurrence thereof and will provide the Company with thirty (30) calendar days to cure these particular circumstances (the “Company’s Cure Period”). Failing such cure, Executive’s termination of employment for Good Reason shall be effective on the day immediately following the expiration of the Company’s Cure Period.

(f) “IPO” shall mean on or before June 30, 2018, a firm commitment underwritten public offering of shares of common stock (and any other securities of the Company that may be sold along with such shares of common stock in any such public offering).

2. Duties and Scope of Position. During the Employment Term (as defined below), Executive will serve as Chief Executive Officer of the Company, reporting solely and directly to the Board, and assuming and discharging such responsibilities as are commensurate with Executive’s position. During the Employment Term, Executive will provide services in a manner that will faithfully and diligently further the business of the Company and will devote all of Executive’s business time, attention and energy thereto, excepting time reasonably devoted to the affairs of Bioexcel Corporation and its Affiliates. Executive may not serve as a director on any entity’s board of directors (other than Bioexcel Corporation and its Affiliates) without prior written consent of the Board, which consent may be withheld by the Company in its sole and absolute discretion. Executive has been appointed to serve as a member of the Board as of the Effective Date (defined below) and the Company will nominate Executive for re-election to the Board upon any expiration of his term of service as a director that occurs during his employment by the Company.

3. Employment Term. The term of Executive’s employment under this Agreement shall commence as of the date above (the “Effective Date”) and shall continue for a period of two (2) years, unless earlier terminated in accordance with Section 9 hereof. The term of Executive’s employment shall be automatically renewed for successive one (1) year periods until Executive or the Company delivers to the other party a written notice of their intent not to renew the “Employment Term,” such written notice to be delivered at least ninety (90) days prior to the expiration of the then-effective “Employment Term” as that term is defined below. The period commencing as of the Effective Date and ending two (2) years from the Effective Date or such later date to which the term of Executive’s employment under this Agreement shall have been extended is referred to herein as the “Employment Term”.

4. Base Compensation. Initially, the Company shall pay to Executive a base compensation (the “Base Compensation”) of \$240,000 per year (prorated for any partial year), payable in accordance with the Company’s regular payroll practices and shall be subject to all applicable tax withholdings and deductions. The Base Compensation shall be increased to \$450,000 per year (prorated for any partial year) after an IPO, less applicable tax withholdings and deductions. The Board or its compensation committee shall review Executive’s performance from time to time for purposes of, among other things, determining the appropriateness of increasing his Base Compensation hereunder. For purposes of the Agreement, the term “Base Compensation” as of any point in time shall refer to the Base Compensation as increased pursuant to this Section 4.

5. Bonus.

(a) Target Bonus. If the Company completes an IPO, then Executive will be eligible to receive an annual bonus (the “Bonus”) with a target amount equal to 50% of Base Compensation. The actual amount of such Bonus, if any, will be determined based upon the Company’s achievement of performance milestones for each fiscal year (in each case, the “Target Year”). The performance milestones referenced in this Section 5 for each Target Year

shall be mutually agreed upon by Executive and either the Board or its compensation committee. Such performance milestones shall be established by the last day of the third month of the Target Year. If Executive and the Board or the compensation committee are unable to mutually agree upon such performance milestones, then the Company shall determine the performance milestones in its sole and absolute discretion. The Bonus, if any, shall be paid by the fifteenth day of the second month of the fiscal year immediately following the Target Year. Except as otherwise provided in the last sentence of this paragraph, the Bonus, if any, will not be deemed “earned” until the date that it is paid. Accordingly, Executive must be employed by the Company on the Bonus payment date in order to be eligible for any such payment. In addition, Executive will be entitled to such payment if his employment ceases following completion of the applicable Target Year (but before the Bonus payment date) due to his death, Disability or a reason described below in Section 8(b).

(b) IPO Bonus. Executive shall be entitled to a special bonus upon the completion of an IPO (“IPO Bonus”). The IPO Bonus shall be equal to \$90,000. The IPO Bonus, if any, will not be deemed “earned” until the date that the IPO is completed. Accordingly, Executive must be employed by the Company on the date that the IPO is completed in order to be eligible for any such payment. Payment of the IPO Bonus will be made on the first regularly scheduled payroll date that follows the completion of the IPO.

6. Benefits; Vacation Days. (a) The Company will establish an employee healthcare and other benefit plans as soon as commercially practicable after the IPO. During the Employment Term, Executive shall be entitled to participate in all employee benefit plans and programs that the Company decides, in its sole and absolute discretion, to make available to the Company’s senior level executives as a group or to its employees generally, as such plans or programs may be in effect from time to time.

(b) During the Employment Period, Executive shall be entitled to twenty (20) vacation days per year, as well as holidays, sick days and personal days in accordance with the Company’s policies, as such policies may be amended from time to time. Any unused vacation, holiday, sick or personal days earned in one calendar year may not be used in any subsequent calendar year. Upon the termination of the Executive’s employment with the Company, no cash shall be paid in lieu of accrued but unused vacation, holiday, sick or personal days.

7. Termination.

(a) Termination by the Company. The Company may terminate Executive’s employment immediately for Cause. Provided, however, that if the Company seeks to terminate Executive’s employment for Cause, then Executive’s termination shall not be effective until the day immediately following the expiration of the Executive’s Cure Period. Except as otherwise set forth in Section 9(c) below, the Company must provide Executive with thirty (30) days advance written notice of its decision to terminate Executive’s employment without Cause.

(b) Termination by Executive. Executive may terminate his employment for Good Reason, provided that, such termination for Good Reason shall not be effective until the day immediately following the expiration of the Company’s Cure Period. Executive must provide the Company with ninety (90) days advance written notice of his decision to terminate his employment without Good Reason. Following its receipt of Executive’s advance written

notice of Executive's decision to terminate his employment without Good Reason, the Company may, in its sole and absolute discretion, decide to render Executive's termination without Good Reason effective at any time prior to the expiration of the ninety (90) day notice period set forth in this Section 9(b).

(c) Termination for Death or Disability. Executive's employment shall terminate automatically upon his death. The Company must provide Executive with ten (10) days advance written notice of its decision to terminate Executive's employment as a result of Executive's Disability.

8. Payments upon Termination.

(a) Termination by the Company for Cause, Death or Disability or by Executive Without Good Reason. In the event that Executive's employment hereunder is terminated: (i) by the Company for Cause; (ii) as a result of Executive's death or Disability; (iii) by Executive without Good Reason; or (iv) as a result of Executive providing the Company with notice of his intent not to renew the Employment Term pursuant to Section 3, then the Company shall pay to Executive (or in the case of death, Executive's estate) any unpaid compensation then due for periods prior to the effective date of Executive's termination. In addition, the Company shall reimburse Executive for all expenses reasonably and necessarily incurred by Executive in connection with the business of the Company prior to the effective date of termination, provided that Executive (or Executive's estate) submit proper expense reports to the Company no later than fourteen (14) days after the effective date of Executive's termination.

(b) Termination by the Company Without Cause or by Executive With Good Reason. In the event that Executive's employment hereunder is terminated by the Company without Cause, by Executive with Good Reason or as a result of the Company providing Executive with notice of its intent not to renew the Employment Term pursuant to Section 3, then the Company shall provide Executive with the same payments and benefits set forth in Section 8(a). Further, provided Executive timely executes a general release of all claims against the Company in a form attached hereto as Exhibit A(a "Release") and the Release becomes effective within 60 days following the date of Executive's termination, then Executive shall also receive: (i) a *pro rata* Bonus for the Target Year in which Executive's termination became effective, payable on the same date that bonuses are payable to other executives of the Company in the year following such Target Year; (ii) continued payment of Executive's Base Compensation during the twenty four (24) month period immediately following Executive's termination on the Company's regularly scheduled payroll dates; (iii) vesting of 50% of any otherwise unvested portion of all equity awards held by Executive immediately prior to his termination date; and (iv) reimbursement for Executive's payment of COBRA premiums until the earlier of (x) the eighteen (18) months following Executive's termination date, and (y) the date Executive obtains other employment that offers substantially comparable medical insurance coverage, payable over such period on the Company's regularly scheduled payroll dates; provided, however, that if the 60 day period for the Release to become effective begins in one calendar year and ends in a second calendar year, the first installment of the payments made under (ii) and (ii) hereof shall not be paid until the second calendar year and shall include all amounts that would have been paid prior to such date if such delay had not applied; and provided, further, if the Company's reimbursement of the COBRA premium contributions as described in (iii) hereof, would subject the Company to any tax or penalty under the Patient

Protection and Affordable Care Act, Section 105(h) of the Internal Revenue Code of 1986, as amended (the "Code") or applicable regulations or guidance issued thereunder, Executive and the Company agree to work together in good faith to restructure such benefit.

(c) Termination Prior to a Change of Control. In the event that (i) the Company terminates Executive's employment without Cause, Executive terminates his employment with Good Reason, or Executive's employment terminates as a result of the Company providing Executive with notice of its intent not to renew the Employment Term pursuant to Section 3 and (ii) a Change of Control is consummated no more than six (6) months following the effective date of Executive's termination, then, in addition to the payments and benefits set forth in Sections 8(a) and 8(b), Executive shall also receive a lump sum payment equal to twenty-four (24) months of Executive's Base Compensation. In order to receive the payment set forth in this Section 8(c): (i) the Change of Control must have been Pending on the effective date of Executive's termination; and (ii) Executive must execute the Release. The payment shall be made on the first regularly scheduled payroll date following the later of (x) the Change of Control, and (y) the effective date of the Release; provided, however, that if the 60 day period for the Release to become effective begins in one calendar year and ends in a second calendar year, the payment shall not be paid until the second calendar year.

(d) Termination Subsequent to a Change of Control. In the event that (i) the Company terminates Executive's employment without Cause, Executive terminates his employment with Good Reason, or Executive's employment terminates as a result of the Company providing Executive with notice of its intent not to renew the Employment Term pursuant to Section 3 and (ii) a Change of Control is consummated no more than twelve (12) months prior to the effective date of Executive's termination, then, in addition to the payments and benefits set forth in Sections 8(a) and 8(b), Executive shall also receive a lump sum payment equal to twenty-four (24) months of Executive's Base Compensation. In order to receive the payment set forth in this Section 8(d), Executive must execute the Release. The payment shall be made on the first regularly scheduled payroll date following the effective date of the Release; provided, however, that if the 60 day period for the Release to become effective begins in one calendar year and ends in a second calendar year, the payment shall not be paid until the second calendar year.

(e) Definition of "Pending." For purposes of Section 8(c), a Change of Control transaction shall be deemed to be "Pending" each time any of the following circumstances exist: (A) the Company and a third party have entered into a confidentiality agreement that has been signed by a duly-authorized officer of the Company and that is related to a potential Change of Control transaction; or (B) the Company has received a written expression of interest from a third party, including a binding or non-binding term sheet or letter of intent, related to a potential Change of Control transaction.

9. Directors & Officers Liability Insurance. The Company further agrees to maintain a directors and officers liability insurance policy covering Executive in an amount and on terms no less favorable to him than the coverage the Company provides other senior executives and directors (and, with respect periods following any cessation of Executive's employment, its former senior executives and directors).

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs and representatives of Executive and the assigns and successors of the

Company, but neither this Agreement nor any rights or obligations hereunder shall be assignable or otherwise subject to hypothecation by Executive (except by will or by operation of the laws of intestate succession or by Executive notifying the Company that cash payment be made to an affiliated investment partnership in which Executive is a control person) or by Company, except that Company may assign this Agreement to any successor (whether by merger, purchase or otherwise) to all or substantially all of the stock, assets or businesses of Company, and the Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place.

11. Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered (if to the Company, addressed to its Secretary at the Company's principal place of business on a non-holiday weekday between the hours of 9 a.m. and 5 p.m.; if to Executive, via personal service to his last known residence) or three business days following the date it is mailed by U.S. registered or certified mail, return receipt requested and postage prepaid.

12. Confidential Information. Executive recognizes and acknowledges that by reason of Executive's employment by and service to the Company before, during and, if applicable, after the Employment Term, Executive will have access to certain confidential and proprietary information relating to the Company's business, which may include, but is not limited to, trade secrets, trade "know-how," product development techniques and plans, formulas, customer lists and addresses, financing services, funding programs, cost and pricing information, marketing and sales techniques, strategy and programs, computer programs and software and financial information (collectively referred to herein as "Confidential Information"). Executive acknowledges that such Confidential Information is a valuable and unique asset of the Company and Executive covenants that he will not, unless expressly authorized in writing by the Company, at any time during the course of Executive's employment use any Confidential Information or divulge or disclose any Confidential Information to any person, firm or corporation except in connection with the performance of Executive's duties for and on behalf of the Company and in a manner consistent with the Company's policies regarding Confidential Information. Executive also covenants that at any time after the termination of such employment, directly or indirectly, he will not use any Confidential Information or divulge or disclose any Confidential Information to any person, firm or corporation, unless such information is in the public domain through no fault of Executive or except when required to do so by a court of law, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) with apparent jurisdiction to order Executive to divulge, disclose or make accessible such information. All written Confidential Information (including, without limitation, in any computer or other electronic format) which comes into Executive's possession during the course of Executive's employment shall remain the property of the Company. Unless expressly authorized in writing by the Company, Executive shall not remove any written Confidential Information from the Company's premises, except in connection with the performance of Executive's duties for and on behalf of the Company and in a manner consistent with the Company's policies regarding Confidential Information. Upon termination of Executive's employment, the Executive agrees to immediately return to the Company all written Confidential Information (including, without limitation, in any computer or other electronic format) in Executive's possession.

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13. Non-Competition; Non-Solicitation.

(a) Non-Compete. Executive hereby covenants and agrees that during his employment by the Company and for a period of one (1) year following the termination of Executive's employment, regardless of the reason for such termination, Executive will not, without the prior written consent of the Company, directly or indirectly, on his own behalf or in the service or on behalf of others, whether or not for compensation, engage in any business activity, or have any interest in any person, firm, corporation or business, through a subsidiary or parent entity or other entity (whether as a shareholder, agent, joint venturer, security holder, trustee, partner, Executive, creditor lending credit or money for the purpose of establishing or operating any such business, partner or otherwise) with any Competing Business in the Covered Area. For the purpose of this Section 13(a), "Competing Business" means the development or sale of pharmaceuticals involving immuno-oncology or neuroscience; provided, however, that Bioxcel Corporation and its Affiliates will not constitute Competing Businesses. For the purpose of this Section 13(a), "Covered Area" means all geographical areas of the United States and other foreign jurisdictions where the Company has offices and/or sells its products directly or indirectly through distributors and/or other sales agents. Notwithstanding the foregoing, Executive may own shares of companies whose securities are publicly traded, so long as ownership of such securities do not constitute more than one percent (1%) of the outstanding securities of any such company.

(b) Non-Solicitation. Executive further agrees that during his employment by the Company and for a period of one (1) year following the termination of Executive's employment, regardless of the reason for such termination, Executive will not divert any business of the Company and/or its affiliates or any customers or suppliers of the Company and/or the Company's and/or its affiliates' business to any other person, entity or competitor, or induce or attempt to induce, directly or indirectly, any person to leave his or her employment with the Company and/or its affiliates; provided, however, that the foregoing provisions shall not apply to a general advertisement or solicitation program that is not specifically targeted at such employees.

(c) Executive acknowledges and agrees that his obligations provided herein are necessary and reasonable in order to protect the Company and its affiliates and their respective business and the Executive expressly agrees that monetary damages would be inadequate to compensate the Company and/or its affiliates for any breach by the Executive of his covenants and agreements set forth herein. Accordingly, Executive agrees and acknowledges that any such violation or threatened violation of Section 12 or 13 will cause irreparable injury to the Company and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Company and its affiliates shall be entitled to obtain injunctive relief against the threatened breach or the continuation of any such breach by the Executive of Section 12 or 13 without the necessity of proving actual damages. If, at the time of enforcement of Sections 12 or 13, a court shall hold that the duration, scope or area restrictions stated therein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the restrictions contained therein to cover the maximum period, scope and area permitted by law.

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14. Miscellaneous Provisions.

(a) Modifications; No Waiver. No provision of this Agreement may be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(b) Entire Agreement. This Agreement supersedes all prior agreements and understandings between the parties, oral or written. No modification, termination or attempted waiver shall be valid unless in writing, signed by the party against whom such modification, termination or waiver is sought to be enforced.

(c) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the internal substantive laws, but not the conflicts of law rules, of the State of Connecticut.

(d) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(e) Counterparts. This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, and may be delivered by facsimile or other electronic means, but all of which shall be deemed originals and taken together will constitute one and the same Agreement.

(f) Headings. The headings of the Sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

(g) Construction of Agreement. In the event of a conflict between the text of the Agreement and any summary, description or other information regarding the Agreement, the text of the Agreement shall control.

(h) Withholding. The Company shall be entitled to withhold from any amounts to be paid or benefits provided to Executive hereunder any federal, state, local or foreign withholding, FICA and FUTA contributions, or other taxes, charges or deductions which it is from time to time required to withhold.

(i) Section 409A.

(i) The parties agree that this Agreement shall be interpreted to comply with or be exempt from Section 409A of the Code and the regulations and guidance promulgated thereunder (collectively "Section 409A"), and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. In no event whatsoever will the Company be liable for any additional tax, interest or penalties that may be imposed on Executive under Section 409A or any damages for failing to comply with Section 409A.

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(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits considered "nonqualified deferred compensation" under Section 409A upon or following a termination of employment unless and until such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." If Executive is deemed on the date of termination to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B), then with regard to any payment or the provision of any benefit that is considered nonqualified deferred compensation under Section 409A payable on account of a "separation from service," such payment or benefit shall be made or provided at the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such "separation from service" of Executive, and (ii) the date of Executive's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 16(i)(ii) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed on the first business day following the expiration of the Delay Period to Executive in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

(iii) With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (x) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, (y) the amount of expenses eligible for reimbursement, or in-kind benefits, provided during any taxable year shall not affect the expenses eligible for reimbursement, or in-kind benefits, to be provided in any other taxable year, provided, that, this clause (y) shall not be violated with regard to expenses reimbursed under any arrangement covered by Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (z) such payments shall be made on or before the last day of Executive's taxable year following the taxable year in which the expense occurred.

(iv) For purposes of Section 409A, Executive's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days following the date of termination"), the actual date of payment within the specified period shall be within the sole discretion of the Company.

[signature page follows]

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IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Agreement on the date first written above.

BIOXCEL THERAPEUTICS, INC.

By: /s/ Richard Steinhart

Name: Richard Steinhart

Title: Chief Financial Officer

VIMAL MEHTA, PH.D.

/s/ Vimal Mehta

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EXHIBIT A

RELEASE AGREEMENT

THIS RELEASE AGREEMENT (this "Release") is made by and between VIMAL MEHTA, PH.D ("Executive") and BIOXCEL THERAPEUTICS, INC. (the "Company").

WHEREAS, Executive's service with the Company ceased on [date]; and

WHEREAS, in connection with that cessation of service, Executive is entitled to certain severance benefits, subject to the execution of this Release.

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Consideration. In consideration for Executive's execution of this Release, the Company will provide Executive with the payments, rights and benefits described in Section 8 of the Executive Employment Agreement between Executive and the Company dated _____, 2018 (the "Employment Agreement"). Executive acknowledges that the payments, rights and benefits described in Section 8 of the Employment Agreement (other than those described in Section 8(a)) would not otherwise be due to him in the absence of his execution of this Release.

2. Executive's Release.

2.1. Executive hereby fully and forever releases and discharges the Company, its parent and subsidiary corporations and each of their predecessors, successors, assigns, stockholders, affiliates, officers, directors, trustees, employees, agents and attorneys, past and present (the Company and each such person or entity is referred to as a "**Released Person**") from any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, damages, judgments, orders and liabilities, of whatever kind or nature, direct or indirect, in law, equity or otherwise, whether known or unknown, arising through the date of this Release out of Executive's employment by the Company or the termination thereof, including, but not limited to, any claims for relief or causes of action under the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. §§ 2601 et seq., Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000 et seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621 et seq. (the "**ADEA**"), the Older Workers Benefit Protection Act, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 et seq., 42 U.S.C. § 1981, the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§2101 et seq., the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 et seq., or any other federal, state or local statute, ordinance or regulation regarding discrimination in employment and any claims, demands or actions based upon alleged wrongful or retaliatory discharge or breach of contract under any state or federal law.

2.2. Executive expressly represents that he has not filed a lawsuit or initiated any other administrative proceeding against a Released Person and that he has not assigned any

claim against a Released Person. Executive further promises not to initiate a lawsuit or to otherwise pursue any claim against a Released Person.

2.3. Nothing in this Release shall preclude or prevent Executive from filing a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local government agency or commission ("**Government Agencies**"). Executive further understands that this Release does not limit Executive's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Release does not limit Executive's right to receive an award for information provided to any Government Agencies. In addition, this Release will not prevent Executive from (i) participating, cooperating, or testifying in any charge, action, investigation, or proceeding with, or providing information to, any self-regulatory organization, governmental agency or legislative body, and/or pursuant to the Sarbanes-Oxley Act, or (ii) filing, testifying, participating in or otherwise assisting in a proceeding relating to an alleged violation of any federal, state or municipal law relating to fraud, or any rule or regulation of the Securities and Exchange Commission or any self-regulatory organization.

2.4. The foregoing will not be deemed to release (a) claims to enforce Sections 8 and 9 of the Employment Agreement, (b) the Company's obligation (pursuant to the last sentence of Section 5(a) of the Employment Agreement) to pay any annual bonus earned but not yet paid with respect to a year ended prior to Executive's cessation of employment, (c) claims for indemnification under the governing documents of the Company or its affiliates, any indemnification agreement or applicable law, (d) claims for the benefit of coverage under applicable directors' and officers' insurance policies, (e) claims for benefits under the terms of the employee benefit plans of the Company or its affiliates, or (f) claims in Executive's capacity as a holder of securities of the Company or its affiliates.

3. **Rescission Right.** Executive expressly acknowledges and recites that (a) he has read and understands the terms of this Release in its entirety, (b) he has entered into this Release knowingly and voluntarily, without any duress or coercion; (c) he has been advised orally and is hereby advised in writing to consult with an attorney with respect to this Release before signing it; (d) he was provided with at least [21] calendar days after receipt of the Release to consider its terms before signing it; and (e) he is provided 7 calendar days from the date of signing to terminate and revoke this Release, in which case this Release shall be unenforceable, null and void. Executive may revoke this Release during those 7 days by providing written notice of revocation to the Company at [address], Attn: General Counsel.

4. Miscellaneous.

4.1. Severability. Whenever possible, each provision of this Release will be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Release is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision, and this Release will be reformed, construed and enforced as though the invalid, illegal or unenforceable provision had never been herein contained.

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4.2. Entire Agreement. Except as otherwise provided herein, this Release contains the entire agreement and understanding of the parties hereto relating to the subject matter hereof, and merges and supersedes all prior and contemporaneous discussions, agreements and understandings of every nature relating to the subject matter hereof.

4.3. Governing Law. This Release shall be governed by, and enforced in accordance with, the laws of the State of Connecticut, without regard to the application of the principles of conflicts of laws.

4.4. Counterparts and Facsimiles. This Release may be executed, including execution by facsimile signature, in multiple counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Release to be executed by its duly authorized officer, and Executive has executed this Release, in each case on the date indicated below, respectively.

BIOXCEL THERAPEUTICS, INC.

By: _____
Name:
Title:

VIMAL MEHTA, PH.D.

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BioXcel Therapeutics Announces Pricing of Initial Public Offering

BRANFORD, Conn. Mar. 8, 2018 — BioXcel Therapeutics, Inc. (“BTI”), a clinical stage biopharmaceutical development company utilizing novel artificial intelligence to identify the next wave of medicines across neuroscience and immuno-oncology, today announced the pricing of its initial public offering of 5,454,545 shares of common stock at a public offering price of \$11.00 per share, before underwriting discounts and commissions, for gross proceeds of approximately \$60.0 million. All of the shares are being offering by BTI. In addition, BTI has granted the underwriters a 30-day option to purchase up to an additional 818,181 shares of common stock at the initial public offering price. The shares are scheduled to begin trading on the Nasdaq Capital Market under the ticker symbol “BTAI” on Thursday, March 8, 2018. The offering is expected to close on March 12, 2018, subject to the satisfaction of customary closing conditions.

Barclays Capital Inc., UBS Securities LLC and BMO Capital Markets Corp. are acting as joint book-running managers for the proposed offering. Canaccord Genuity Inc. is acting as lead manager. H.C. Wainwright & Co., LLC is acting as independent financial advisor to BTI for the offering.

A registration statement relating to these securities has been filed with, and declared effective by, the Securities and Exchange Commission. The offering will be made only by means of a prospectus. Copies of the final prospectus relating to the offering, when available, may be obtained from Barclays Capital Inc., Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717, by telephone at 888-603-5847 or by email at barclaysprospectus@broadridge.com; UBS Securities LLC, Attention: Prospectus Department, 1285 Avenue of the Americas, New York, NY 10019, by telephone at 888-827-7275 or by email at ol-prospectusrequest@ubs.com; or BMO Capital Markets Corp., Attention: Equity Syndicate Department, 3 Times Square, 25th Floor, New York, NY 10036, by telephone at 800-414-3627, or by email at bmopropectus@bmo.com.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

About BioXcel Therapeutics, Inc. (BTI):

BioXcel Therapeutics, Inc. is a clinical stage biopharmaceutical company focused on drug development that utilizes novel artificial intelligence to identify the next wave of medicines across neuroscience and immuno-oncology. The company’s drug re-innovation approach

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leverages existing approved drugs and/or clinically validated product candidates together with big data and proprietary machine learning algorithms to identify new therapeutic indices. The company’s two most advanced clinical development programs are BXCL501, a sublingual thin film formulation designed for acute treatment of agitation resulting from neurological and psychiatric disorders, and BXCL701, an immuno-oncology agent designed for treatment of a rare form of prostate cancer and for treatment of pancreatic cancer.

Forward Looking Statements

This press release contains forward-looking statements, including with respect to the expected closing of the initial public offering. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including that the conditions to the closing of the initial public offering are not satisfied. BTI undertakes no obligation to update any such forward-looking statements after the date hereof to conform to actual results or changes in expectations.

Contact Information:

The Ruth Group for BTI:
 Lee Roth / Janhavi Mohite
 646-536-7012 / 7026
lroth@theruthgroup.com / jmohite@theruthgroup.com

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BioXcel Therapeutics Announces Closing of Initial Public Offering

BRANFORD, Conn., March 12, 2018 — BioXcel Therapeutics, Inc. (“BTI”) (Nasdaq: BTAI), a clinical stage biopharmaceutical development company utilizing novel artificial intelligence to identify the next wave of medicines across neuroscience and immuno-oncology, today announced the closing of its initial public offering of 5,454,545 shares of common stock at a public offering price of \$11.00 per share, before underwriting discounts and commissions. BTI raised approximately \$60.0 million in gross proceeds from the offering, before underwriting discounts and commissions and other offering-related expenses. In addition, BTI has granted the underwriters a 30-day option to purchase up to an additional 818,181 shares of common stock at the initial public offering price. BTI’s common stock began trading on the Nasdaq Capital Market on March 8, 2018 under the ticker symbol “BTAI”.

Barclays Capital Inc., UBS Securities LLC and BMO Capital Markets Corp. acted as joint book-running managers for the offering. Canaccord Genuity Inc. acted as lead manager. H.C. Wainwright & Co., LLC acted as independent financial advisor to BTI for the offering.

A registration statement relating to these securities has been filed with, and declared effective by, the Securities and Exchange Commission. The offering of these shares was made by means of a prospectus. Copies of the final prospectus relating to the offering may be obtained from Barclays Capital Inc., Broadridge Financial Solutions, 1155 Long Island Avenue, Edgewood, NY 11717, by telephone at 888-603-5847 or by email at barclaysprospectus@broadridge.com; UBS Securities LLC, Attention: Prospectus Department, 1285 Avenue of the Americas, New York, NY 10019, by telephone at 888-827-7275 or by email at ol-prospectusrequest@ubs.com; or BMO Capital Markets Corp., Attention: Equity Syndicate Department, 3 Times Square, 25th Floor, New York, NY 10036, by telephone at 800-414-3627, or by email at bmopropectus@bmo.com.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

About BioXcel Therapeutics, Inc. (BTI):

BioXcel Therapeutics, Inc. is a clinical stage biopharmaceutical company focused on drug development that utilizes novel artificial intelligence to identify the next wave of medicines across neuroscience and immuno-oncology. The company’s drug re-innovation approach leverages existing approved drugs and/or clinically validated product candidates together with big data and proprietary machine learning algorithms to identify new therapeutic indices. The company’s two most advanced clinical development programs are BXCL501, a sublingual thin film formulation designed for acute treatment of agitation resulting from neurological and

psychiatric disorders, and BXCL701, an immuno-oncology agent designed for treatment of a rare form of prostate cancer and for treatment of pancreatic cancer.

Contact Information:

The Ruth Group for BTI:
Lee Roth / Janhavi Mohite
646-536-7012 / 7026
lroth@theruthgroup.com / jmohite@theruthgroup.com
