

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

FORM 8-K
CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported): December 13, 2021

EHEALTH, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of incorporation)

001-33071
(Commission File Number)

56-2357876
(I.R.S. Employer Identification No.)

2625 AUGUSTINE DRIVE, SECOND FLOOR
SANTA CLARA, CA 95054

(Address of principal executive offices) (Zip Code)

(650) 584-2700
(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))

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|-------------------|---|
| Common Stock, par value \$0.001 per share | EHTH | The Nasdaq Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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 September 22, 2021, eHealth, Inc. (the “Company”) entered into a binding term sheet (the “Term Sheet”) with Fran Soistman that sets forth the terms of Mr. Soistman’s employment as chief executive officer of the Company as summarized in the Current Report on Form 8-K filed on September 23, 2021. On December 13, 2021, the Company and Mr. Soistman entered into an employment agreement (the “Employment Agreement”) based substantially on the terms previously agreed to in the Term Sheet. The Employment Agreement supersedes and replaces the Term Sheet in its entirety.

The Employment Agreement provides for an initial annual base salary of \$750,000 and a target annual incentive award opportunity equal to 110% of his annual base salary. Mr. Soistman also received a signing bonus of \$200,000 on October 8, 2021.

Consistent with the terms of the Employment Agreement, on October 6, 2021, Mr. Soistman was granted a stock option to purchase 100,000 shares of the common stock of the Company (the “Time-Based Option”) and a performance-based stock option to purchase 100,000 shares of the common stock of the Company (the “Performance-Based Option”). Each of the Time-Based Option and the Performance-Based Option have a per share exercise price equal to the closing price of the Company’s common stock on the date of grant. Subject to potential acceleration upon certain terminations of employment, the Time-Based Option is subject to vesting over four years. The Performance-Based Option is subject to vesting based on achievement of stock price goals (subject to potential acceleration of vesting upon certain terminations of employment). Each of the Time-Based Option and Performance-Based Option was granted under the Company’s 2021 Inducement Plan (the “Inducement Plan”) and otherwise is subject to the terms and conditions of an option agreement under the Inducement Plan.

Consistent with the terms of the Employment Agreement, on November 2, 2021, Mr. Soistman was granted three restricted stock unit awards. The first restricted stock unit award covers 60,000 shares of the Company’s common stock and is subject to vesting over four years, subject to potential acceleration upon certain terminations of employment (the “Time-Based RSUs”). The second restricted stock unit award covers 70,000 shares of the Company’s common stock and is subject to vesting based on achievement of stock price goals (the “Performance-Based RSUs”). The third restricted stock unit award covers 12,500 shares of the Company’s common stock and vests quarterly over four years (the “Starting RSUs”). Each of these awards was granted under the Inducement Plan and otherwise is subject to the terms and conditions of a stock unit agreement under the Inducement Plan.

If Mr. Soistman’s employment is terminated by the Company without cause or if he voluntarily resigns for good reason, and provided that any such termination occurs during the period beginning with the date that is four months prior to and ending on the date 12 months following a change of control of the Company (the “Change of Control Period”), Mr. Soistman will be entitled to the following severance payments and benefits: (i) a cash payment in an amount equal to 24 months of his then current annual base salary; (ii) a cash payment in an amount equal to two times his target cash incentive award for such year; (iii) Company-paid COBRA premiums for up to 18 months; (iv) 100% vesting of any outstanding and unvested time-based equity awards; and (v) accelerated vesting for any performance-based equity awards that have satisfied a performance goal but for which service-based vesting has not yet been satisfied.

If Mr. Soistman’s employment is terminated by the Company without cause or if he voluntarily resigns for good reason and provided that any such termination occurs other than during the Change of Control Period, Mr. Soistman will be entitled to the following severance payments and benefits: (i) a cash payment in an amount equal to 24 months of his then current annual base salary; (ii) a cash payment in an amount equal to his target cash incentive award for such year, on a prorated basis; (iii) Company-paid COBRA premiums for up to 18 months, (iv) full vesting of the Starting RSUs, and 12 additional months of vesting credit with respect to the Time-Based Option and the Time-Based RSUs (and, in the case of a voluntary resignation for good reason, 12 additional months of vesting credit with respect to other time-based awards, as if the award had been subject to monthly vesting); and (v) accelerated vesting for any performance-based equity awards that have satisfied a performance goal, but for which the service-based vesting has not yet been satisfied.

Mr. Soistman’s receipt of the foregoing severance payments and benefits is conditioned on his execution of a release of claims in favor of the Company and its affiliates.

The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the Employment Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference.

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

On December 13, 2021, the Company’s board of directors approved amended and restated bylaws of the Company (the “Amended and Restated Bylaws”) effective December 13, 2021. The Amended and Restated Bylaws amend and restate the Company’s bylaws in their entirety to among other things: (i) require greater disclosure from stockholders nominating directors or proposing other business at annual or special meetings of stockholders; (ii) make changes to the operation of the advance notice bylaws; (iii) make explicit the authority of committees to form subcommittees; (iv) add a forum selection bylaw so that unless we consent in writing to the selection of an alternative forum, (a) derivative actions, fiduciary duty claims and other general stockholder corporate claims must be brought exclusively in the Delaware Court of Chancery and (b) claims under the Securities Act of 1933, as amended, (in respect of the sale by the Company of its securities) must be brought exclusively in federal district court instead of a state court; and (v) make other administrative, technical and conforming changes to track the language in the Delaware General Corporation Law.

The foregoing description of the amendments made in the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the Amended and Restated Bylaws, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

| <u>Item No.</u> | <u>Description</u> |
|------------------------|--|
| | Amended and Restated Bylaws of the Registrant |
| | Employment Agreement, dated December 13, 2021, between Fran Soistman and eHealth, Inc. |
| | Cover Page Interactive Data File (embedded within the Inline XBRL document) |

SIGNATURE

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

Date: December 17, 2021

eHealth, Inc.

/s/ Christine Janofsky

Christine Janofsky
Chief Financial Officer
(Principal Financial Officer)

EHEALTH, INC.
AMENDED AND RESTATED BYLAWS
(As Amended on December 13, 2021)

ARTICLE I
STOCKHOLDERS

Section 1. Annual Meeting.

(1) An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication. In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board (as defined below) may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders. For purposes of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies or other unfilled seats in previously authorized directorships.

(2) Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's proxy materials with respect to such meeting; (b) by or at the direction of the Board of Directors; or (c) by any stockholder of record of the Corporation (such stockholder, the "Record Stockholder") at the time of the giving of the notice required in Section 1(3) of these Bylaws and who (i) is a Record Stockholder on the record date for the determination of stockholders entitled to notice of the meeting, (ii) is entitled to vote at the meeting, (iii) is a Record Stockholder at the meeting and (iv) has complied with the notice procedures set forth in this Section 1. For the avoidance of doubt, clause (c) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "Exchange Act")) at an annual meeting of stockholders.

(3) For nominations or business to be properly brought before an annual meeting by a Record Stockholder pursuant to clause (c) of Section 1(2) of these Bylaws, (a) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (b) such business must be a proper matter for stockholder action under Delaware law and these Bylaws, and (c) the Record 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 (as defined below) required by these Bylaws. To be timely, a Record Stockholder's notice shall be received by the Secretary at the principal executive offices of the Corporation not later than 5:00 p.m., Pacific time, on the 90th day or earlier than 9:00 a.m., Pacific time, on the 120th day prior to the one-year anniversary of the preceding year's annual meeting of stockholders (the "Anniversary"); provided, however, that, subject to the last sentence of this Section 1(3), if no annual meeting was held in the previous year or if the meeting is convened more than twenty-five (25) days prior to or delayed by more than twenty-five (25) days after the Anniversary, then notice by the Record

Stockholder to be timely must be so received not later than 5:00 p.m., Pacific time, on the 10th day following the day on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. Notwithstanding anything in the preceding sentence to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement made by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 10 days before the last day that a Record Stockholder may deliver a notice of nomination in accordance with the preceding sentence, then a Record Stockholder's notice required by this bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than 5:00 p.m., Pacific time, on the 10th day following the day on which such public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors is first made by the Corporation. In no event shall an adjournment, a rescheduling or a postponement of an annual meeting for which notice has been given, or an announcement of such an adjournment, rescheduling or postponement, commence a new time period (or extend any time period) for the giving of a Record Stockholder's notice pursuant to this Section 1.

(4) Such Record Stockholder's notice shall set forth:

a. if such notice pertains to the nomination of directors, as to each person (a "nominee") whom the Record Stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the nominee; (B) the principal occupation or employment of the nominee; (C) the class, series and number of shares of the Corporation that are owned, directly or indirectly, beneficially and of record by the nominee; (D) a description of any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument"), directly or indirectly owned beneficially by the nominee, and any rights to or interests in any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation directly or indirectly held by the nominee; (E) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which the nominee has a right to vote, directly or indirectly, any shares of any security of the Corporation; (F) a description of any short interest in any security of the Corporation held by the nominee (for purposes of this Section (1)(4), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security); (G) a description of any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by the nominee that are separated or separable from the underlying shares of the Corporation; (H) a description of any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which the nominee is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; (I) a description of any performance-related fees (other than an asset-based fee) that the nominee is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including, without limitation, any such interests held by members of the nominee's immediate family sharing the same household; (J) a description of any direct or indirect

compensatory, payment, indemnification or other financial agreement, arrangement or understanding that the nominee has, or has had within the past three years, with any person or entity other than the Corporation (including the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Corporation (a "Third-Party Compensation Arrangement"); (K) a description of any other material relationships between the nominee and the nominee's affiliates (as defined below) and associates (as defined below), or others acting in concert with them, on the one hand, and the Record Stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates or associates or others acting in concert with them, on the other hand; (L) a signed and completed written questionnaire (in the form provided by the Secretary at the written request of the Record Stockholder, which form will be provided by the Secretary within 10 days of receiving such request) containing information regarding the nominee's background and qualifications and such other information as may reasonably be required by the Corporation to determine the eligibility of such nominee to serve as a director of the Corporation or to serve as an independent director of the Corporation; (M) a written representation and undertaking that, unless previously disclosed to the Corporation, the nominee is not, and will not become, a party to any voting agreement, arrangement, commitment, assurance or understanding with any person or entity as to how the nominee, if elected as a director, will vote on any issue; (N) a written representation and undertaking that, unless previously disclosed to the Corporation, the nominee is not, and will not become, a party to any Third-Party Compensation Arrangement; (O) a written representation and undertaking that, if elected as a director, the nominee would be in compliance, and will continue to comply, with the Corporation's corporate governance guidelines and code of business conduct as disclosed on the Corporation's website, as amended from time to time; (P) a description of any significant equity interests (or hedging or derivative instruments) in any principal competitor of the Corporation that are held by the nominee; (Q) a written representation and undertaking that the nominee, if elected, intends to serve a full term on the Board of Directors; (R) a description of all arrangements or understandings between the Record Stockholder, or beneficial owner, if any, on whose behalf the nomination is made, and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the Record Stockholder; and (S) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including, without limitation, an appropriate written consent of the nominee to being named in the applicable proxy statement as a nominee of the Record Stockholder and beneficial owner, if any, on whose behalf the nomination is made and to serving as a director if elected);

b. as to any business that the Record Stockholder proposes to bring before the meeting, (A) a brief description of such business; (B) the text of the proposed business (including the text of any resolutions proposed for consideration and, if applicable, the text of any proposed amendment to these Bylaws); (C) the reasons for conducting such business at the meeting; (D) any material interest in such business of such Record Stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates and associates, or others acting in concert with them; and (E) a description of all agreements, arrangements and understandings between such Record Stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and their respective affiliates or associates or others acting in concert with them, and any other person or persons (including their names) in connection with the proposal of such business by such Record Stockholder; and

c. as to (1) the Record Stockholder giving the notice, (2) the beneficial owner, if any, on whose behalf the nomination or proposal is made, (3) the respective affiliates and associates of such Record Stockholder or beneficial owner and (4) any person controlling, directly or indirectly, or acting in concert with, such Record Stockholder or beneficial owner (for the purposes of this Article I, each, a "party"):

(i) the name and address of each such party;

(ii) (A) the class, series, and number of shares of the Corporation that are owned, directly or indirectly, beneficially or of record by each such party; (B) a description of any Derivative Instruments directly or indirectly owned beneficially by each such party, and any other rights to or interests in any direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation directly or indirectly held by each such party; (C) a description of any proxy, contract, arrangement, understanding or relationship pursuant to which each such party has a right to vote, directly or indirectly, any shares of any security of the Corporation; (D) a description of any short interest in any security of the Corporation held by each such party (for purposes of this Section 1(4), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security); (E) a description of any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by each such party that are separated or separable from the underlying shares of the Corporation; (F) a description of any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which each such party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; (G) a description of any performance-related fees (other than an asset-based fee) that each such party is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including, without limitation, any such interests held by members of each such party's immediate family sharing the same household; (H) a description of any significant equity interests (or hedging or derivative instruments) in any principal competitor of the Corporation that are held by each such party; (I) a description of any direct or indirect interest of each such party in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (in each case, including any employment agreement, collective bargaining agreement or consulting agreement); (J) a completed and duly executed written questionnaire with respect to the background of each such party (in the form provided by the Secretary at the written request of the Record Stockholder, which form will be provided by the Secretary within 10 days of receiving such request); and (K) a representation and undertaking that the Record Stockholder is a holder of record of stock of the Corporation as of the date of submission of the Solicitation Statement and intends to appear in person or by qualified representative at the meeting to bring the nomination or proposal before the meeting;

(iii) any other information relating to each such party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act; and

(iv) a statement whether each such party will deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to carry the proposal, or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by the Record Stockholder or beneficial holder, as the case may be, to be sufficient to elect the nominee or nominees proposed to be nominated by the Record Stockholder or as is otherwise required by the Exchange Act (the information required by this Section 1(4), a "Solicitation Statement").

(5) In addition to the requirements of Section 1(4) of these Bylaws, to be timely, a Solicitation Statement (and any additional information submitted to the Corporation in connection therewith) must further be updated and supplemented (a) if necessary, so that the information provided or required to be provided in such Solicitation Statement is true and correct

as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the meeting and as of the date that is 10 days prior to the meeting or any adjournment, rescheduling or postponement thereof; and (b) to provide any additional information that the Corporation may reasonably request. Such update and supplement or additional information, if applicable, must be received by the Secretary at the principal executive offices of the Corporation, in the case of a request for additional information, promptly following a request therefor, which response must be delivered not later than such reasonable time as is specified in any such request from the Corporation or, in the case of any other update or supplement of any information, not later than five business days after the record date(s) for the meeting (in the case of any update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date for the meeting or any adjournment, rescheduling or postponement thereof (in the case of the update and supplement required to be made as of 10 days prior to the meeting or any adjournment, rescheduling or postponement thereof). The failure to timely provide such update, supplement or additional information shall result in the matters contemplated by such Solicitation Statement no longer being eligible for consideration at the meeting.

(6) A person shall not be eligible for election as a director at an annual meeting unless (i) the person is nominated by a Record Stockholder in accordance with Section 1(2)(c) of these Bylaws or (ii) the person is nominated by or at the direction of the Board of Directors. In addition, a nominee shall not be eligible for election if such nominee or a party takes action contrary to the statements or representations made in the Solicitation Statement applicable to such nominee or party or if the Solicitation Statement applicable to such nominee or party contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(7) Only such 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 this Section 1. The chairperson of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defectively proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(8) Notwithstanding anything to the contrary in this Section 1, unless otherwise required by law, if the Record Stockholder (or a qualified representative of the Record Stockholder) does not appear in person at the meeting to present a nomination or other proposed business, then such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 1, to be considered a qualified representative of the Record Stockholder, a person must be a duly authorized officer, manager or partner of such Record Stockholder or must be authorized by a writing executed by such Record Stockholder or an electronic transmission delivered by such Record Stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(9) For purposes of these Bylaws, (a) "affiliate" has the meaning set forth in Rule 12b-2 promulgated under the Exchange Act; (b) "associate" has the meaning set forth in Rule 12b-2 promulgated under the Exchange Act; and (c) "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(10) Notwithstanding the foregoing provisions of this Section 1, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to matters set forth in this Section 1. Nothing in this Section 1 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2. Special Meetings.

(1) Unless otherwise required by law, special meetings of the stockholders, other than those required by statute, may be called only by the Chairperson of the Board or the Chief Executive Officer (or if there is no Chief Executive Officer, the President) or by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. The Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board may cancel, postpone or reschedule any previously scheduled special meeting before or after the notice for such meeting has been sent to the stockholders.

(2) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors. The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (a) by or at the direction of the Board of Directors or (b) by any Record Stockholder at the time of giving of notice provided for in this paragraph and who (i) is a Record Stockholder on the record date for the determination of stockholders entitled to notice of the meeting, (ii) is entitled to vote at the meeting, (iii) is a Record Stockholder at the meeting and (iv) timely delivers a Solicitation Statement to the Secretary setting forth the information set forth in Section 1(4)(a) and 1(4)(c) of these Bylaws, it being understood that Section 1(5) of these Bylaws will also apply to such Solicitation Statement. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders only if such Record Stockholder's notice required by the preceding sentence shall be received by the Secretary at the principal executive offices of the Corporation not later than 5:00 p.m., Pacific time, on 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 of Directors to be elected at such meeting. In no event shall an adjournment, rescheduling, postponement of a special meeting for which notice has been given, or an announcement of such an adjournment, rescheduling or postponement, commence a new time period (or extend any time period) for the giving of a record stockholder's notice pursuant to this Section 2. A person shall not be eligible for election as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board of Directors or (ii) by a Record Stockholder in accordance with the notice procedures set forth in this Section 2. In addition, a nominee pursuant to this Section 2 shall not be eligible for election if such nominee or a party takes action contrary to the statements or representations made in the Solicitation Statement applicable to such nominee or party or if the Solicitation Statement applicable to such nominee or party contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination shall be disregarded.

(3) Notwithstanding anything to the contrary in this Section 2, unless otherwise required by law, if the Record Stockholder (or a qualified representative of the Record Stockholder) does not appear in person at the meeting to present a nomination, then such nomination will be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation and counted for purposes of determining a quorum. For

purposes of this Section 2, to be considered a qualified representative of the Record Stockholder, a person must be a duly authorized officer, manager or partner of such Record Stockholder or must be authorized by a writing executed by such Record Stockholder or an electronic transmission delivered by such Record Stockholder to act for such stockholder as proxy at the meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

(4) Notwithstanding the foregoing provisions of this Section 2, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to matters set forth in this Section 2. Nothing in this Section 2 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 3. Notice of Meetings. Notice of the place, if any, date, and time of all meetings of the stockholders, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, 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 special meetings, the purpose or purposes for which the meeting is called, shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and, except as otherwise required by law, shall not be more than sixty (60) nor less than ten (10) days before the date of such adjourned meeting, 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. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 4. Quorum. At any meeting of the stockholders, the holders of a majority of the voting power of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be provided by law, the Certificate of Incorporation or these Bylaws, or by the rules of any stock exchange upon which the Corporation's securities are listed. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the shares of such class or series or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, or by the rules of any stock exchange upon which the Corporation's securities are listed.

The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, unless the number of stockholders who withdraw does not permit action to be taken by the stockholders in accordance with the Delaware General Corporation Law. If a quorum is not present or represented at any meeting of the stockholders, then the chairperson of the meeting shall have the power to adjourn the meeting from time to time until a quorum is present or represented.

Section 5. Organization. Such person as the Board of Directors may have designated or, in the absence of such a person, the Chairperson of the Board or, in his or her absence, the Chief Executive Officer of the Corporation, or in his or her absence, the President of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairperson of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairperson of the meeting appoints.

Section 6. Conduct of Business. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The chairperson shall have the power to adjourn the meeting to another place, if any, date and time, whether or not a quorum is present. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

Section 7. Proxies and Voting. At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. Any copy, facsimile telecommunication or other reliable reproduction of the document (including any electronic transmission) created pursuant to this paragraph may be substituted or used in lieu of the original document for any and all purposes for which the original document could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original document. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the Delaware General Corporation Law.

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 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 may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

All elections shall be determined by a plurality of the votes cast, and except as otherwise provided by law, the rules of any stock exchange upon which the Corporation's stock is listed, the Certificate of Incorporation or these Bylaws, all other matters shall be determined by a majority of the votes cast affirmatively or negatively.

Section 8. Stock List. The Corporation shall prepare at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting;

provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date, arranged in alphabetical order and showing the address of each such stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any such stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting in any manner permitted by law.

If the meeting is to be held at a place, the stock list shall also be open to the examination of any stockholder during the whole time of the meeting as provided by law. 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. This stock ledger shall be the only evidence as to who are the stockholders entitled by this section to examine the stock list or to vote at any meeting of stockholders.

ARTICLE II BOARD OF DIRECTORS

Section 1. Number, Election and Term of Directors. Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board. The directors, other than those who may be elected by the holders of any series of preferred stock under specified circumstances, shall be divided, with respect to the time for which they severally hold office, into three classes. At each annual meeting of stockholders, (i) directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his or her successor shall have been duly elected and qualified, and (ii) if authorized by a resolution of the Board of Directors, directors may be elected to fill any newly created directorship or vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

Section 2. Newly Created Directorships and Vacancies. Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum or by a sole remaining director (and not by stockholders), and directors so chosen shall serve for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires or until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

Section 3. Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, if any, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson of the Board, the Chief Executive Officer, or if none, the President or by a majority of the Whole Board, provided that the person(s) authorized to call special meetings of the Board of Directors may authorize another person or persons to send notice of such

meeting, and shall be held at such place, if any, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given to each director by whom it is not waived by mailing written notice not less than five (5) days before the meeting or by telephone (or verbally in person) or electronic transmission of the same not less than twenty-four (24) hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 5. Quorum. At any meeting of the Board of Directors, a majority of the Whole Board shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 6. Participation in Meetings By Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 7. Conduct of Business. At any meeting of the Board of Directors, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present at any meeting at which a quorum is present, except as otherwise provided herein or required by law.

Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing or by electronic transmission. The writing or writings or electronic transmission or transmissions shall be filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. 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 sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given for the purposes of this Section 7 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 8. Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, the Board of Directors shall have the authority to fix the compensation of the directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or paid a stated salary or paid other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for service on such committees.

ARTICLE III COMMITTEES

Section 1. Committees of the Board of Directors. The Board of Directors may, by resolution passed by a majority of the Whole Board, from time to time designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified

member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or in the resolutions of the Board of Directors establishing such committee or required by law. Adequate provision shall be made for notice to members of all meetings; a majority of the members shall constitute a quorum unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolutions of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission. The writing or writings or electronic transmission or transmissions shall be filed with the minutes of the proceedings of such 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 the purposes of this Section 2 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.

ARTICLE IV OFFICERS

Section 1. Officers. The officers of the Corporation shall be a Chief Executive Officer and a Secretary. The Corporation may also have, at the discretion of the Board of Directors, a Chairperson of the Board of Directors, a Vice Chairperson of the Board of Directors, a President, a Chief Financial Officer, a Treasurer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person.

Section 2. Appointment of Officers. The Board of Directors shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 3 and 5 of this Article IV, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers. The Board of Directors may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers as the business of the Corporation may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

Section 4. Removal and Resignation of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without

cause, by the Board of Directors or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer upon whom such power of removal may be conferred by the Board of Directors.

Any officer may resign at any time by giving notice, in writing or by electronic transmission, to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or as provided in Section 3 of this Article IV.

Section 6. Authority and Duty of Officers. All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board of Directors, by any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of designation, and, to the extent not so provided, as generally pertain to such offices, subject to the control of the Board of Directors.

Section 7. Action with Respect to Securities of Other Entities. Unless otherwise directed by the Board of Directors, the Chief Executive Officer or any officer of the Corporation authorized by the Chief Executive Officer or the Board of Directors shall have power to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares or other securities of any other entity or entities, and all rights incident to any management authority conferred on the Corporation in accordance with the governing documents of any entity or entities, standing in the name of the Corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE V STOCK

Section 1. Certificates of Stock. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock, provided that the Board of Directors 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. Unless otherwise provided by resolution of the Board of Directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two (2) officers of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Transfers of Stock. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents

designated to transfer shares of the stock of the Corporation. If such stock is certificated, except where a certificate is issued in accordance with Section 4 of Article V of these Bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, before a new certificate is issued therefor.

Section 3. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or any adjournment thereof, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders, nor more than sixty (60) days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto. 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 of Directors 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 provisions of Section 213 of the Delaware General Corporation Law and this Section 3 at the adjourned meeting.

Section 4. Lost, Stolen or Destroyed Certificates. In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI NOTICES

Section 1. Notices to Stockholders. If mailed, notice to stockholders shall be deemed 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. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

Section 2. Notices to Directors. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing or by electronic transmission, either before or after such meeting.

Section 3. Waivers. A written waiver of any notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened.

ARTICLE VII MISCELLANEOUS

Section 1. Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. Reliance upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 5. Time Periods. Unless otherwise required by law or as specified herein, in applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide

prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification or advancement, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 1 of this Article VIII, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3. Right of Indemnitee to Bring Suit. If a claim under Section 1 or 2 of this Article VIII is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, Bylaws, agreement, vote of stockholders or directors or otherwise.

Section 5. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation, or any other persons, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. Nature of Rights. The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration, elimination or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration, elimination or repeal.

ARTICLE IX AMENDMENTS

In furtherance and not in limitation of the powers conferred by law, the Board of Directors, acting pursuant to a resolution adopted by a majority of the Whole Board, is expressly authorized to adopt, amend and repeal these Bylaws subject to the power of the holders of capital stock of the Corporation to adopt, amend or repeal the Bylaws; provided, however, that, with respect to the power of holders of capital stock to adopt, amend and repeal Bylaws of the Corporation, notwithstanding any other provision of these Bylaws or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, these Bylaws or any preferred stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws.

ARTICLE X FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the United States District Court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (A) any derivative action or proceeding brought on behalf of the Corporation, (B) any action asserting a claim of breach of a fiduciary duty owed by any director, stockholder, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (C) any action arising pursuant to any provisions of the Delaware General Corporation Law or the Certificate of Incorporation or these Bylaws (as either may be amended from time to time) or (D) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (A) through (D) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination), which is vested

in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction.

Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, against any person in connection with any offering of the Corporation's securities, including, without limitation and for the avoidance of doubt, any auditor, underwriter, expert, control person, or other defendant.

Any person or entity purchasing, holding, or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article X. This provision enforceable by any party to a complaint covered by the provisions of this Article X. For the avoidance of doubt, nothing contained in this Article X shall apply to any action brought to enforce a duty or liability created by the Exchange Act or any successor thereto.

**EHEALTH, INC.
EMPLOYMENT AGREEMENT**

This **Employment Agreement** (the “**Agreement**”) is entered into by and between **eHealth, Inc.** (the “**Company**”) and Fran Soistman (“**Executive**”).

1. Duties and Scope of Employment.

(a) **Positions and Duties.** Effective as of September 22, 2021 (the “**Start Date**”), Executive has become an employee of the Company. Effective November 1, 2021, Executive began serving as the Company’s Chief Executive Officer (“**CEO**”), reporting directly to the Company’s Board of Directors (the “**Board**”). As CEO, Executive will render such business and professional services in the performance of his duties, consistent with Executive’s position within the Company, as reasonably assigned to him by the Board. Executive will not be required to relocate to California and may work remotely from his homes in South Carolina and Maryland. Executive will be required to travel as reasonably needed and as mutually determined by Executive and the Board. Executive agrees to provide the Company with daily travel and work location information to facilitate state tax withholding requirements. The period Executive is employed by the Company under this Agreement is referred to herein as the “**Employment Term**.”

(b) **Board Membership.** Executive was appointed to the Board effective as of November 1, 2021. Upon the termination of Executive’s employment for any reason, unless otherwise requested by the Board, Executive will be deemed to have resigned from the Board (and all other positions held at the Company and its affiliates) voluntarily, without any further action by Executive, and Executive, at the Board’s request, will execute any documents necessary to reflect his resignation.

(c) **Obligations.** During the Employment Term, Executive will devote Executive’s full business efforts and time to the Company and will use good faith efforts to discharge Executive’s obligations under this Agreement to the best of Executive’s ability and in accordance with the Company’s Code of Business Conduct. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation, or consulting activity, including membership of boards of directors or advisors, for any direct or indirect remuneration without the prior written approval of the Board; *provided, however*, that Executive may continue to serve in the advisory and board member roles listed on **Exhibit A** hereto.

(d) **Representations.** Executive hereby represents and warrants to the Company that Executive is not party to any contract, understanding, agreement or policy, written or otherwise, that would be breached by Executive’s entering into, or performing services under, this Agreement. Executive further represents that as of the date of this Agreement, there are no threatened, pending, or actual claims against Executive of which he is aware as a result of his employment with any previous employer or his membership on any boards of directors.

(e) **Other Entities.** Executive agrees to serve and may be appointed, without additional compensation, as an officer and director for any of the Company’s subsidiaries, partnerships, joint ventures, limited liability companies and other affiliates, including entities in which the Company has a significant investment, as determined by the Company. As used in this Agreement, the term “**affiliates**” will include any entity controlled by, controlling, or under common control of the Company.

2. At-Will Employment. Executive and the Company agree that Executive’s employment with the Company constitutes “at-will” employment. Executive and the Company acknowledge

that this employment relationship may be terminated at any time, with or without Cause or Good Reason (as each such term is defined in Section 8 below) or advance notice, at the option either of the Company or Executive. However, as described in this Agreement, Executive may be entitled to severance benefits depending upon the circumstances of Executive's termination of employment.

3. Compensation.

(a) **Base Salary.** As of the Start Date, the Company will pay Executive an annual salary of \$750,000 (such annual salary, as is then effective, to be referred to herein as "**Base Salary**"). The Base Salary will be paid periodically in accordance with the Company's normal payroll practices and is subject to the usual, required withholdings. Commencing in 2023, the Base Salary shall be subject to review by the Compensation Committee in accordance with the annual review process.

(b) **Annual Incentive Bonus.** Effective November 1, 2021, Executive will be eligible to receive a target annual incentive bonus equal to 110% of Executive's Base Salary (with a maximum bonus of 175% of Executive's Base Salary)(the "**Annual Incentive Bonus**"). The Annual Incentive Bonus shall be determined based upon achievement of performance goals set forth as part of the Company's executive bonus plan for the applicable year and approved in the sole discretion of the Compensation Committee after consultation with Executive. The actual Annual Incentive Bonus, if any, awarded to Executive for any performance period will depend upon the extent to which the applicable performance goal(s) are achieved or exceeded, and, except as provided herein, is subject to Executive's continued employment through the date bonuses are paid to Company executives generally. Executive shall be paid a guaranteed bonus of \$137,877 (less deductions and withholdings) for 2021, calculated based on Executive's time of service as CEO during 2021. In no event shall payment be made later than March 15th of the year following the year in which the incentive bonus was earned. Commencing in 2023, the Annual Incentive Bonus shall be subject to review by the Compensation Committee in accordance with the annual review process.

(c) **Start Bonus.** Executive was paid a one-time cash bonus of \$200,000, less applicable withholdings (the "**Start Bonus**") on October 8, 2021.

(d) **Stock Option.** The Company approved the following stock option awards (together, the "**Options**"), which were granted to Executive on October 6, 2021:

(i) The first stock option award covers one hundred thousand (100,000) shares of Company common stock (the "**Time-Based Option**"). The exercise price is at a per share exercise price equal to the closing price per share of Company common stock on Nasdaq Global Market on the grant date. Subject to accelerated vesting upon certain terminations of employment as set forth herein, the Time-Based Option is scheduled to vest as to 25% of the shares subject to the Option on the first anniversary of the Start Date and as to the remainder of the shares subject to the Time-Based Option each month thereafter in equal installments on the same day of the month as the Start Date through the fourth anniversary of the Start Date, so as to be 100% vested on the fourth anniversary of the Start Date, subject to Executive's continued employment with the Company or its subsidiaries on each scheduled vesting date.

(ii) The second stock option award covers one hundred thousand (100,000) shares of Company common stock (the "**Performance-Based Option**"). The exercise price is at a per share exercise price equal to the closing price per share of Company common stock on Nasdaq Global Market on the grant date. Subject to accelerated vesting upon certain terminations of employment as set forth herein, the Performance-Based Option is scheduled to

vest in the manner set forth on **Exhibit B** hereto, subject to Executive's continued employment with the Company or its subsidiaries on each scheduled vesting date.

(e) **Restricted Stock Units.** In addition to the Options referenced above, the Company granted Executive the following three restricted stock unit awards (together, the "**RSU Awards**") on November 2, 2021.

(i) The first restricted stock unit award covers sixty thousand (60,000) shares of Company common stock (the "**Time-Based RSU**"). Subject to accelerated vesting upon certain terminations of employment as set forth herein, the RSU will be scheduled to vest as to 25% of the shares subject to the Time-Based RSU on the first anniversary of the Start Date and in equal quarterly installments thereafter on the same day of the month as the Start Date through the fourth anniversary of the Start Date, so as to be 100% vested on the four (4) year anniversary of the Start Date, subject to Executive's continued employment with the Company or its subsidiaries on each scheduled vesting date.

(ii) The second restricted stock unit award covers seventy thousand (70,000) shares of Company common stock (the "**Performance-Based RSU**"). Subject to accelerated vesting upon certain terminations of employment as set forth herein, the Performance-Based RSU will be scheduled to vest in the manner set forth on **Exhibit B** hereto, subject to Executive's continued employment with the Company or its subsidiaries on each scheduled vesting date.

(iii) The third restricted stock unit award covers twelve thousand five hundred (12,500) shares of Company common stock (the "**Starting RSU**"). Subject to accelerated vesting upon certain terminations of employment as set forth herein, the Starting RSUs will vest with respect to 1/16 of the shares subject to the award on the date of grant, and in fifteen (15) equal quarterly installments thereafter, subject to Executive's continued employment with the Company or its subsidiaries on each scheduled vesting date.

The Options and RSU Awards are intended to serve as a material inducement to Executive to become an employee of the Company and were granted under, and subject to the terms and conditions of, an equity plan of the Company and the applicable form of award agreement thereunder. All grants of equity awards were subject to the approval of the Compensation Committee, Executive being employed by the Company on the date of grant and, if required by law, a Form S-8 being filed and effective as of the date of grant.

Executive will be eligible to receive awards of stock options, restricted stock units or other equity awards pursuant to any plans or arrangements the Company may have in effect from time to time. The Compensation Committee will determine in its discretion whether Executive will be granted any such equity awards and the terms of any such award; provided, however, that (except (a) as otherwise determined by the Compensation Committee due to performance issues, and (b) in the case of non-ordinary course (e.g. retention or new hire) grants), Executive shall receive awards on a basis no less favorable than other senior executives of the Company.

4. **Employee Benefits.** Executive will be eligible to participate in accordance with the terms of all Company employee benefit plans, policies and arrangements that are applicable to other executive officers of the Company, as such plans, policies and arrangements may exist from time to time.

5. **Term and Termination of Employment.** In the event Executive's employment with the Company terminates for any reason, Executive will be entitled to any (a) unpaid Base Salary accrued up to the effective date of termination; (b) benefits or compensation as provided under the terms of any employee benefit and compensation agreements or plans applicable to

Executive; (c) unreimbursed business expenses required to be reimbursed to Executive; and (d) rights to indemnification Executive may have under the Company's Articles of Incorporation, Bylaws or Executive's indemnification agreement. In addition, if the termination is by the Company without Cause or Executive resigns for Good Reason, or Executive's employment ends due to death or Disability, then Executive will be entitled to amounts and benefits specified in Section 6, subject to the terms and conditions therein.

6. Severance Benefits.

(a) **Termination Without Cause or Resignation for Good Reason During the Change of Control Period.** If, during the Employment Term and within the Change of Control Period (as defined herein) (i) Executive resigns his employment with the Company (or any parent or subsidiary of the Company) for Good Reason (as defined herein), or (ii) the Company (or any parent or subsidiary of the Company) terminates Executive's employment without Cause (as defined herein), and Executive signs and does not revoke a standard release of claims with the Company in a form substantially similar to that attached hereto as **Exhibit C** (the "**Release**"), then Executive shall receive the following severance benefits from the Company:

(i) **Severance Payment.** Executive shall receive a single lump-sum cash severance payment (less applicable withholding taxes) equal to the sum of (A) twenty-four (24) months of Executive's Base Salary, (B) two times Executive's then-current target Annual Incentive Bonus and (C) any earned but unpaid Annual Incentive Bonus with respect to the prior year, based on actual performance.

(ii) **Acceleration of Vesting of Equity Compensation.** One hundred percent (100%) of Executive's outstanding and unvested time-based equity awards will become vested in full. Any Performance-Based Options or Performance-Based RSUs that have satisfied the stock price goal set forth on **Exhibit B** hereto (including in connection with the Change in Control), but for which the service-based vesting had not yet been satisfied will also vest and the remainder of the Performance-Based Options and Performance-Based RSUs that have not satisfied the stock price goals will terminate and be cancelled for no consideration. All other performance-based equity awards with respect to which performance goals have been achieved but which remain subject to time-based vesting will also vest and the remainder of such performance-based equity awards that have not satisfied the performance goals as of the date of termination will terminate and be cancelled for no consideration.

(iii) **COBRA.** Subject to Executive timely electing continuation coverage under the Consolidated Budget Reconciliation Act of 1985 ("**COBRA**"), Executive shall receive one-hundred percent (100%) Company-paid group health, dental and vision coverage (the "**Company-Paid Coverage**"). If such coverage included Executive's dependents immediately prior to the Change of Control, such dependents shall also be covered at the Company's expense. Company-Paid Coverage shall continue until the earlier of (i) eighteen (18) months from the date of termination, or (ii) the date upon which Executive and his dependents become covered under another employer's group health, dental and vision plans that provide Executive and his dependents with comparable benefits and levels of coverage (such earlier date, the "**COBRA Termination Date**"). Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot provide the Company-Paid Coverage without a substantial risk of violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof provide to Executive a taxable monthly payment in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue Executive's (and Executive's dependents', as applicable) group health, dental and vision coverage in effect on the date of Executive's employment termination (which amount shall be based on the premium for the first month of COBRA coverage), which payments shall

be made to Executive regardless of whether Executive elects COBRA continuation coverage and shall end on the COBRA Termination Date.

(b) Termination Without Cause or Resignation for Good Reason Outside the Change of Control Period. If, during the Employment Term and outside the Change in Control Period, (i) Executive resigns his employment with the Company (or any parent or subsidiary of the Company) for Good Reason, or (ii) the Company (or any parent or subsidiary of the Company) terminates Executive's employment without Cause, and Executive signs and does not revoke the Release, then Executive shall receive the following severance benefits from the Company:

(i) Severance Payment. Executive shall receive a single lump-sum cash severance payment equal to the sum of (A) twenty-four (24) months of Executive's then-current Base Salary; and (B) any earned but unpaid Annual Incentive Bonus with respect to the prior year, based on actual performance.

(ii) Annual Incentive Bonus. Executive shall receive a pro-rated target Annual Incentive Bonus for the year in which the termination occurs, payable at the same time as the severance payment set forth above in Section 6(b)(i). In addition, if actual performance for the year exceeds target and the date of Executive's termination is July 1 or later, then the Company shall pay Executive the remainder of Executive's target Annual Incentive Bonus for such year (less deductions and withholdings), to be paid when bonuses are paid to other executives.

(iii) Acceleration of Vesting of Equity Compensation. Executive will be granted twelve (12) additional months of vesting credit, with respect to the Time-Based Option and Time-Based RSU (with such vesting being calculated as if the award had been subject to monthly vesting) and that the Starting RSU will vest in full. In addition, in the case of a resignation for Good Reason, Executive will be granted twelve (12) additional months of vesting credit with respect to other outstanding and unvested time-based equity awards (with such vesting being calculated as if the award had been subject to monthly vesting). Any Performance-Based Options or Performance-Based RSUs that have satisfied the stock price goal set forth on **Exhibit B** hereto, but for which the service-based vesting had not yet been satisfied will also vest and the remainder of the Performance-Based Options and Performance-Based RSUs that have not satisfied the stock price goals will terminate and be cancelled for no consideration, except as set forth on **Exhibit B** hereto. All other performance-based equity awards with respect to which performance goals have been achieved but which remain subject to time-based vesting will also vest and the remainder of such performance-based equity awards that have not satisfied the performance goals as of the date of termination will terminate and be cancelled for no consideration.

(iv) COBRA. Executive shall receive the COBRA payment benefit set forth above in Section 6(a)(iii).

(c) Benefits True Up. In the event Executive has a termination of employment triggering severance under Section 6(b) and that termination is later determined by the Company to qualify as a termination triggering severance under Section 6(a), then the Company shall make a true-up payment to Executive as of the Change in Control so that the aggregate of all benefits provided to Executive are those in Section 6(a). Notwithstanding any provision of the notices and agreements governing equity awards granted to Executive, any equity awards that would otherwise be forfeited upon a resignation for Good Reason or termination without Cause shall remain outstanding and eligible to vest for four (4) months following such termination to permit the additional acceleration described in Section 6(a) above.

(d) Death or Disability. If during the Employment Term, Executive's employment with the Company terminates due to Executive's death or Disability (as defined herein), then Executive will receive (a) a pro-rated target Annual Incentive Bonus for the year in which the termination occurs, paid when bonuses are paid to other executives, and only to the extent performance goals are actually met; and (b) any other earned but unpaid Annual Incentive Bonus with respect to the prior year, based on actual performance.

(e) Exclusive Remedy. The provisions of this Section 6 are intended to be and are Executive's exclusive rights to severance payments and benefits in the event of termination of service. The parties hereto agree that nothing herein is intended to result in duplication of severance or any other benefits.

(f) Code Section 409A.

(i) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the regulations issued under Section 409A of the Code (the "**Treasury Regulations**") shall not constitute Deferred Compensation Separation Benefits for purposes of Section 6(f)(ii) below, and consequently shall be paid to Executive promptly following termination as otherwise required by this Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement, if Executive is a "specified employee" within the meaning of Section 409A of the Code, and the final regulations and any guidance promulgated thereunder ("**Section 409A**") at the time of Executive's separation from service (as such term is defined in Section 409A) (a "**Separation from Service**"), then the cash severance benefits payable to Executive under this Agreement along with any other severance payments or separation benefits that may be considered deferred compensation under Section 409A (together, the "**Deferred Compensation Separation Benefits**") that are otherwise due to Executive on or within the six (6) month period following Executive's Separation from Service shall accrue during such six (6) month period and shall become payable in a lump sum payment on the date six (6) months and one (1) day following the date of Executive's Separation from Service. All subsequent payments, if any, shall be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following his Separation from Service but prior to the six (6) month anniversary of his date of Separation from Service, then any payments delayed in accordance with this Section shall be payable in a lump sum as soon as administratively practicable after the date of Executive's death and all other Deferred Compensation Separation Benefits shall be payable in accordance with the payment schedule applicable to each payment or benefit.

(iii) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary Separation from Service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) shall not constitute Deferred Compensation Separation Benefits for purposes of Section 6(f)(ii) above. For purposes of this Section 6(f), "**Section 409A Limit**" will mean the lesser of two (2) times: (i) Executive's annualized compensation based upon the annual rate of pay paid to Executive during the Company's taxable year preceding the Company's taxable year of Executive's termination of employment as determined under Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1); or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive's employment is terminated.

(iv) It is the intent of this Agreement to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder shall be subject to the additional tax imposed under Section 409A, and any ambiguities herein shall be interpreted to so comply. The Company and Executive agree to work together in good faith to

consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition under Section 409A prior to actual payment to Executive.

(v) Notwithstanding any other provisions of this Agreement, Executive's receipt of severance payments and benefits under this Agreement is conditioned upon Executive signing and not revoking the Release and subject to the Release becoming effective within sixty (60) days following Executive's termination of employment (the "**Release Period**"). No severance will be paid or provided unless the Release becomes effective during the Release Period. Any severance payments to which Executive is entitled under this Agreement shall be paid by the Company to Executive in cash and in full arrears on the date on which the Release becomes effective or such later date as is required to comply with Section 409A; provided however, that if the Release Period straddles two calendar years, the severance payments to which Executive is entitled under this Agreement shall be paid on the latest of (A) the date on which the Release becomes effective, (B) the first business day of the calendar year following the year in which Executive terminates employment with the Company or (C) such later date as is required to comply with Section 409A.

(vi) With respect to reimbursements or in-kind benefits provided to Executive hereunder (or otherwise) that are not exempt from Section 409A, the following rules shall apply: (A) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during any one of Executive's taxable years shall not affect the expenses eligible for reimbursement, or in-kind benefit to be provided in any other taxable year, (B) in the case of any reimbursements of eligible expenses, reimbursement shall be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred and (C) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

7. **Golden Parachute Excise Tax Best Results.** If any payment or benefit Executive would receive pursuant to this Agreement or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall be reduced to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: (A) cash payments shall be reduced first and in reverse chronological order such that the cash payment owed on the latest date following the occurrence of the event triggering such excise tax will be the first cash payment to be reduced; (B) accelerated vesting of stock awards shall be cancelled/reduced next and in the reverse order of the date of grant for such stock awards (i.e., the vesting of the most recently granted stock awards will be reduced first); and (C) employee benefits shall be reduced last and in reverse chronological order such that the benefit owed on the latest date following the occurrence of the event triggering such excise tax will be the first benefit to be reduced.

The Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder and perform the foregoing calculations. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within fifteen (15) calendar days after the date on which right to a Payment is triggered (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish the Company and Executive with an opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

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

(a) “Cause” shall mean (i) Executive’s commission of any act of fraud, embezzlement or dishonesty, (ii) Executive’s conviction of, or plea of nolo contendere to, a felony under the laws of the United States or any state thereof, (iii) Executive’s continued failure to perform lawfully assigned duties for 30 days after receiving written notification from the Board, (iv) Executive’s unauthorized use or disclosure of confidential information or trade secrets of the Company, (v) Executive’s material breach of any material agreement with the Company or (vi) any other intentional misconduct by Executive that adversely affects the business of the Company in a material manner, in all cases (other than in the case of clause (ii)) after having been provided with written notice and a 14-day opportunity to cure (if the Board determines a cure to be possible) and to be heard by the Board with Executive’s counsel present.

(b) “Change of Control” will mean the occurrence of any of the following events:

(i) Any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company’s then outstanding voting securities; or

(ii) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(iii) The consummation of the sale, lease or other disposition by the Company of all or substantially all the Company’s assets.

(c) “Change of Control Period” will mean the period beginning on the date four (4) months prior to, and ending on the date that is twelve (12) months following, the effective date of a Change of Control.

(d) “Disability” means Executive (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of not less than twelve (12)

months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering Company employees.

(e) **“Good Reason”** will mean that Executive resigns his employment within 120 days after any of the following is undertaken by the Company (or its acquirer) without Executive’s express written consent: (i) a reduction in Executive’s title, (ii) a material reduction of Executive’s duties, authority or responsibilities (including but not limited to a material reduction in duties, authority or responsibilities solely by virtue of the Company being acquired and made part of a larger entity such that Executive is no longer the Chief Executive Officer of a publicly-traded company); (iii) any material (at least 10%) reduction of Executive’s Base Salary and potential bonus (other than a proportionate reduction in Executive’s Base Salary that affects all senior management of the Company); (iv) failure of a successor to the Company to assume this Agreement; (v) any material breach by the Company of any material agreement with Executive; or (vi) prior to a Change of Control (and, following a Change of Control if the Company’s Board exists following such Change of Control) Executive’s position as a member of the Board terminates as a result of the Board’s failing to nominate him for election or re-election thereto; provided, however, that Good Reason shall not exist unless Executive has provided written notice to the Board of the purported grounds for the Good Reason within 90 days of its initial existence and the Company has been provided at least 30 days to remedy the condition.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Executive, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

10. Notice. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five (5) days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one (1) business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one (1) business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to Executive, at his or her last known residential address and (ii) if to the Company, at the address of its principal corporate offices (attention: Secretary), or in any such case at such other address as a party may designate by ten (10) days’ advance written notice to the other party pursuant to the provisions above.

11. Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or as a result of a voluntary resignation shall be communicated by a notice of termination to the other party hereto given in accordance with Section 10 of this Agreement. Such notice shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and shall specify the termination date (which shall be not more than thirty (30) days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing his or her rights hereunder.

12. Indemnification. Subject to applicable law, Executive will be provided indemnification to the maximum extent permitted by the Company's Articles of Incorporation or Bylaws, including, if applicable, any directors and officers insurance policies, with such indemnification to be on terms determined by the Board or any of its committees, but on terms no less favorable than provided to any other Company executive officer or director and subject to the terms of any separate written indemnification agreement.

13. Confidential Information; Dispute Resolution. Executive will be subject to the terms of the Proprietary Information and Inventions Agreement and Arbitration Agreement, entered into effective September 22, 2021.

14. Miscellaneous Provisions.

(a) Attorneys' Fees. The Company shall reimburse Executive for the reasonable attorneys' fees incurred by Executive in connection with negotiation, preparation, and execution of this Agreement (including the preceding term sheet) and any related ancillary documents, in an amount not to exceed \$20,000.

(b) Enforcement Costs. If any civil action or other legal proceeding, including arbitration, is brought for the enforcement of this Agreement or any other material agreement between the parties hereto, and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of such agreements, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses associated thereto.

(c) No Duty to Mitigate. Executive shall not be required to mitigate the amount of any payment contemplated by this Agreement, nor shall any such payment be reduced by any earnings that Executive may receive from any other source.

(d) Waiver. No provision of this Agreement shall 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.

(e) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(f) Entire Agreement. This Agreement, together with Executive's Proprietary Information and Inventions Agreement, Arbitration Agreement, and written equity compensation agreements, constitutes the entire agreement of the parties hereto and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied), of the parties with respect to the subject matter hereof. In particular, and without limitation, this Agreement shall supersede and replace the term sheet between the Company and Executive dated September 22, 2021.

(g) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to the choice of law provisions thereof.

(h) 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.

(i) Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

[remainder of this page left blank]

In Witness Whereof, each of the parties has executed this Employment Agreement, in the case of the Company by its duly authorized Board member, as of the last date signed below.

COMPANY:

eHealth, Inc.

By: /s/ Scott Giesler
Scott Giesler

Title: SVP and General Counsel

Date: Dec 13, 2021

FRAN SOISTMAN

By: /s/ Fran Soistman

Date: 12/13/21

EXHIBIT B

Options and RSU Awards that are subject to stock price goals will contain the following stock price hurdles: 25% vested at \$58.00; an additional 15% vested at \$64.00; an additional 15% vested at \$70.00; an additional 15% vested at \$76.00; an additional 15% vested at \$82.00; and an additional 15% vested at \$105.00 (each a “**Performance Goal**”). A stock price hurdle will be treated as having been met if the 90 trading day VWAP equals or exceeds such hurdle during the four-year period starting on the date of grant (the “**Performance Period**”). If a stock price hurdle has been met, the portion of Options or RSU Awards subject to that hurdle will vest on the earlier of (a) the one-year anniversary of the date that the hurdle was met or (b) the fourth anniversary of the date of grant, so long as Executive remains in continuous service to the Company through such earlier date (subject to the severance provisions of the Agreement).

If, during the Performance Period, a Change in Control (as defined in the equity plan pursuant to which the award is granted) occurs, then the Performance Period will be shortened such that the Performance Period will end as of the Change in Control and, to the extent that any of the Performance Goals are achieved based on the value of the pershare consideration received by the Company’s stockholders in connection with the Change in Control (the “**Per-Share Consideration**”) (and, for the avoidance of doubt, in lieu of and without regard to any ninety (90) trading day VWAP otherwise required with respect to determining the achievement of Performance Goals not in connection with a Change in Control), such Performance Goal will be deemed achieved, as determined by the Compensation Committee in its sole discretion, and the applicable shares subject to the award as a result of such performance goal achievement will become eligible to vest. The unvested portion of the award will be forfeited automatically. Any eligible shares resulting from the Change in Control will be scheduled to vest on the first anniversary of the Change in Control, provided that Executive remains in continuous service through that vesting date (subject to the severance provisions of the Agreement).

Upon a termination of service by the Company without Cause or by Executive for Good Reason in circumstances in which there is no Change in Control and Per-Share Consideration, if the initial \$58.00 hurdle has been previously achieved, then the 90 trading day VWAP as of the date of termination will, to the extent it exceeds the highest previously-achieved hurdle and is less than the next-highest hurdle, be used to calculate pro rata vesting of the tranche that would have vested at the next highest hurdle, based on linear interpolation above such highest previously-achieved hurdle and below such next-highest hurdle, as calculated and determined in the sole discretion of the Compensation Committee. For example, if the \$58.00 hurdle has been previously achieved as of the date of termination, and the 90 trading day VWAP as of the date of termination is \$61.00 (i.e., halfway between \$58.00 and \$64.00), then half of the 15% of the RSU Award that would have vested upon the achievement of the \$64.00 hurdle (i.e., 7.5%) will vest.

Exhibit C

eHealth, Inc. Release of Claims

This Release of Claims (“Agreement”) is made by and between eHealth, Inc. (the “**Company**”), and Fran Soistman (“**Executive**”).

Whereas, Executive has agreed to enter into a release of claims in favor of the Company upon certain events specified in the Employment Agreement by and between Company and Executive (the “**Employment Agreement**”).

Now Therefore, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

1. **Termination.** Executive’s employment from the Company terminated on _____.
2. **Confidential Information.** Executive shall continue to maintain the confidentiality of all confidential and proprietary information of the Company and shall continue to comply with the terms and conditions of the Proprietary Information and Inventions Agreement between Executive and the Company. Executive shall return all the Company property and confidential and proprietary information in his possession to the Company on the Effective Date of this Agreement.
3. **Payment of Salary.** Executive acknowledges and represents that the Company has paid all salary, wages, bonuses, accrued vacation, commissions and any and all other benefits due to Executive.
4. **Release of Claims.** Except as set forth in the last paragraph of this Section 4, Executive agrees that the foregoing consideration represents settlement in full of all outstanding obligations owed to Executive by the Company. Executive, on behalf of himself, and his respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that he may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date of this Agreement including, without limitation,
 - (a) any and all claims relating to or arising from Executive’s employment relationship with the Company and the termination of that relationship;
 - (b) any and all claims relating to, or arising from, Executive’s right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;
 - (c) any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional

misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, Executive Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and Labor Code section 201, *et seq.* and section 970, *et seq.* and all amendments to each such Act as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal, or any state, constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

Executive agrees that the release set forth in this section shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any severance obligations due Executive under the Employment Agreement or to any vested rights to benefits Executive has under any employee benefit plans of the Company. Nothing in this Agreement waives Executive's rights to indemnification or any payments under any fiduciary or directors & officers insurance policy, if any, provided by any act or agreement of the Company, state or federal law or policy of insurance.

5. **Acknowledgment of Waiver of Claims under ADEA.** Executive acknowledges that he is waiving and releasing any rights he may have under the Age Discrimination in Employment Act of 1967 ("**ADEA**") and that this waiver and release is knowing and voluntary. Executive and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement, Executive acknowledges that the consideration given for this waiver and release Agreement is in addition to anything of value to which Executive was already entitled. Executive further acknowledges that he has been advised by this writing that (a) he should consult with an attorney prior to executing this Agreement; (b) he has at least twenty-one (21) days within which to consider this Agreement; (c) he has seven (7) days following the execution of this Agreement by the parties to revoke the Agreement; (d) this Agreement shall not be effective until the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law. Any revocation should be in writing and delivered to the Vice-President of Human Resources at the Company by close of business on the seventh day from the date that Executive signs this Agreement.

6. **Civil Code Section 1542.** Executive represents that he is not aware of any claims against the Company other than the claims that are released by this Agreement. Executive acknowledges that he has been advised by legal counsel and is familiar with the provisions of California Civil Code 1542, below, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD

**HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR
RELEASING PARTY.**

Executive, being aware of said code section, agrees to expressly waive any rights he may have thereunder, as well as under any statute or common law principles of similar effect.

7. No Pending or Future Lawsuits. Executive represents that he has no lawsuits, claims, or actions pending in his name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. Executive also represents that he does not intend to bring any claims on his own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein.

8. Application for Employment. Executive understands and agrees that, as a condition of this Agreement, he shall not be entitled to any employment with the Company, its subsidiaries, or any successor, and he hereby waives any right, or alleged right, of employment or re-employment with the Company.

9. No Cooperation. Executive agrees that he will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless under a subpoena or other court order to do so.

10. No Admission of Liability. No action taken by the Company, either previously or in connection with this Agreement shall be deemed or construed to be (a) an admission of the truth or falsity of any claims heretofore made or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

11. Authority. Executive represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind them to the terms and conditions of this Agreement.

12. No Representations. Executive represents that he has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

13. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

14. Entire Agreement. This Agreement, along with the Employment Agreement, the Proprietary Information and Inventions Agreement, and Executive's written equity compensation agreements with the Company, represents the entire agreement and understanding between the Company and Executive concerning Executive's separation from the Company.

15. No Oral Modification. This Agreement may only be amended in writing signed by Executive and the Chairman of the Compensation Committee of the Board of Directors of the Company.

16. Governing Law. This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of Delaware.

17. Effective Date. This Agreement is effective eight (8) days after it has been signed by both Parties.

18. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

19. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) They have read this Agreement;

(b) They have had the opportunity of being represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) They understand the terms and consequences of this Agreement and of the releases it contains;

(d) They are fully aware of the legal and binding effect of this Agreement.

In Witness Whereof, the Parties have executed this Agreement on the respective dates set forth below.

eHealth, Inc.

Dated: By: _____

[name, title]

Dated: _____

Fran Soistman