

## BY-LAW NO. 5

A by-law relating to requirements for advance notice of nominations for election as directors of

### **MICROBIX BIOSYSTEMS INC.**

(herein called the “**Company**”)

#### **NOMINATIONS OF DIRECTORS**

1. Nomination procedures - Subject only to the provisions of the *Business Corporations Act* (Ontario) (the “**Act**”) and article of the Company, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation. Nominations of persons for election to the board of directors of the Company (the “**Board**”) may be made at any annual meeting of shareholders, or at any special meeting of shareholders if one of the purposes for which the special meeting was called was the election of directors:
  - (a) by or at the direction of the Board, including pursuant to a notice of meeting, or management information circular;
  - (b) by or at the direction or request of one or more shareholders pursuant to a proposal made in accordance with s. 99 of the Act, or a requisition of the shareholders made in accordance with section s. 105 of the Act; or
  - (c) by any person (a “**Nominating Shareholder**”): (A) who, at the close of business on the date of the giving by the Nominating Shareholder of the notice provided for below in this by-law and at the close of business on the record date for notice of such meeting, is entered in the securities register of the Company as a holder of one or more shares carrying the right to vote at such meeting or who beneficially owns shares that are entitled to be voted at such meeting; and (B) who complies with the notice procedures set forth below in this by-law.
2. Timely notice - In addition to any other requirements under applicable laws, for a nomination to be made by a Nominating Shareholder, the Nominating Shareholder must have given notice thereof that is both timely in accordance with section 3 below and in proper written form in accordance with section 4 below to the Secretary of the Company at the principal executive offices of the Corporation.
3. Manner of timely notice - To be timely, a Nominating Shareholder’s notice to the Secretary of the Company must be made:
  - (a) in the case of an annual meeting of shareholders, not less than 30 nor more than 65 days prior to the date of the annual meeting of shareholders; provided, however, that in the event that the annual meeting of shareholders is to be held on a date that is less than 50 days after the date (the “**Notice Date**”) on which the first public announcement of the date of the annual meeting was made, notice by the Nominating Shareholder may be made not later than the close of business on the tenth (10th) day following the Notice Date; and

- (b) in the case of a special meeting (which is not also an annual meeting) of shareholders called for the purpose of electing directors (whether or not called for other purposes), not later than the close of business on the fifteenth (15th) day following the day on which the first public announcement of the date of the special meeting of shareholders was made.

The time periods for the giving of a Nominating Shareholder's notice set forth above shall in all cases be determined based on the original date of the applicable annual meeting or special meeting of shareholders, and in no event shall any adjournment or postponement of a meeting of shareholders or the announcement thereof commence a new time period for the giving of such notice.

4. Proper form of timely notice - To be in proper written form, a Nominating Shareholder's notice to the Secretary of the Company must set forth:

- (a) as to each person whom the Nominating Shareholder proposes to nominate for election as a director: (A) the name, age, business address and residential address of the person; (B) the principal occupation or employment of the person; (C) the citizenship of such person; (D) the class or series and number of shares in the capital of the Company which are controlled or which are owned beneficially or of record by the person as of the record date for the meeting of shareholders (if such date shall then have been made publicly available and shall have occurred) and as of the date of such notice; and (E) any other information relating to the person that would be required to be disclosed in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws (as defined below); and
- (b) as to the Nominating Shareholder giving the notice, full particulars regarding any proxy, contract, agreement, arrangement or understanding pursuant to which such Nominating Shareholder has a right to vote or direct the voting of any shares of the Company and any other information relating to such Nominating Shareholder that would be required to be made in a dissident's proxy circular in connection with solicitations of proxies for election of directors pursuant to the Act and Applicable Securities Laws (as defined below).

The Company may require any proposed nominee to furnish such other information as may reasonably be required by the Company to determine the eligibility of such proposed nominee to serve as an independent director of the Company or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such proposed nominee.

5. Eligibility for nomination as a director - No person shall be eligible for election as a director of the Company unless nominated in accordance with the provisions of this by-law; provided, however, that nothing in this by-law shall be deemed to preclude discussion by a shareholder (as distinct from the nomination of directors) at a meeting of shareholders of any matter that is properly before such meeting pursuant to the provisions of the Act or the discretion of the Chairman.

6. The Chairman of the meeting shall have the power and duty to determine whether a nomination was made in accordance with the procedures set forth in the foregoing provisions and, if any proposed nomination is not in compliance with such foregoing provisions, to declare that such defective nomination shall be disregarded.

7. Terms - For purposes of this by-law:

- (a) “**public announcement**” shall mean disclosure in a press release reported by a national news service in Canada, or in a document publicly filed by the Company under its profile on the System of Electronic Document Analysis and Retrieval at www.sedar.com; and
- (b) “**Applicable Securities Laws**” means the applicable securities legislation of each relevant province and territory of Canada, as amended from time to time, the rules, regulations and forms made or promulgated under any such statute and the published national instruments, multilateral instruments, policies, bulletins and notices of the securities commission and similar regulatory authority of each province and territory of Canada.

8. Delivery of notice - Notwithstanding any other provision of this by-law, notice given to the Secretary of the Company pursuant to this by-law may only be given by personal delivery, facsimile transmission or by email (at such email address as may be stipulated from time to time by the Secretary of the Company for purposes of this notice), and shall be deemed to have been given and made only at the time it is served by personal delivery to the Secretary at the address of the principal executive offices of the Corporation, email (at the address as aforesaid) or sent by facsimile transmission (provided that receipt of confirmation of such transmission has been received); provided that if such delivery or electronic communication is made on a day which is a not a business day or later than 5:00 p.m. (Toronto time) on a day which is a business day, then such delivery or electronic communication shall be deemed to have been made on the next following day that is a business day.

9. Board discretion - Notwithstanding the foregoing, the Board may, in its sole discretion, waive any requirement in this by-law.

**EFFECTIVE DATE**

10. This by-law is effective from the date of the resolution of the directors of the Company making this by-law until confirmed, confirmed as amended or rejected by the shareholders of the Corporation. Upon confirmation by the shareholders, the President and Secretary of the Company be and are authorized and directed to sign and certify this by-law to signify and evidence its proper making and confirmation.

MADE by resolution of the directors of the Company as of the 22<sup>nd</sup> day of February, 2016.

CONFIRMED by the shareholders of the Company as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary